No. 13,631

STATEMENT OF QUESTIONS

THE QUESTIONS PRESENTED ON APPEAL ARE:

Did the Court below err in granting the defendant's motion for Summary Judgment either for the reason that the plaintiff's claim was barred by laches or for the reason that no statutory right of the plaintiff had been denied in firing him from his position as Engineer (Naval Architect).

Or is a United States Civil Service employee to be victimized as the result of the indecisions, intimidations, motives, errors, prejudices, incompetence, disinterest and insinuations by his supervisors, other employees, officials and other personnel of the military or civilian organizations of a departmental agency and/or a judicial department of the United States Government?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,631

ANDREW J. EASTER
Appellant

v.

CHARLES S. THOMAS
Secretary of the Navy
Appellee

Appeal from the United States District Court for the District of Columbia Circuit

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal by appellant, Plaintiff below, from the order filed October 1, 1956, (app. p. 43A) denying the motion to set aside an order of the United States District Court for the District of Columbia and or granting defendants motion for Summary Judgment rendered June 26, 1956 for the appellee, the defendant below (pp. 36A)

Jurisdiction of this appeal is conferred upon this court Section 1291, title 28 U.S.C.A.

STATEMENT OF FACTS

On March 25, 1952, the plaintiff, Andrew J. Easter, having exhausted his administrative remedies, (App. p.

23A) filed a complaint in the United States District Court for the District of Columbia asking that the Navy Department's action in separating him from the service be held unlawful and that such action be set aside. This action was entitled Andrew J. Easter v. Dan A. Kimball, Secretary of the Navy, Civil Action No. 1307-52. For many months there followed a concerted action on the part of the plaintiff to compel the defendant to answer this complaint, notwithstanding the fact that the applicable statute allows the United States Government only sixty days to respond to such a pleading. This is fully explained in the affidavit of plaintiff's counsel which was not controverted. (See app. p. 33A)

On July 7, 1952 Defendant filed a motion for Summary Judgment (almost identical to the one filed in Civil Action No. 1174-54,) in Civil Action No. 1307-52. The motion was denied, but the plaintiff was required to file an amended complaint seeking his relief under a different statute. The amended complaint was filed promptly in Civil Action No. 1307-52, but notwithstanding this fact the Government still would not file an answer to the complaint even after its motion for Summary Judgment had been denied and after the Court had indicated that the plaintiff was in all likelihood entitled to the relief he was seeking (See app. p. 31A) (partial transcript of Civil Action No. 1307-52), and not until April 7, 1953, was an answer ever filed by the defendant to the original complaint or amended complaint, over a year after the original complaint was filed.

On January 19, 1953, three months before the Government had ever filed an answer to the original complaint, the defendant, Dan A. Kimball resigned as the Secretary of the Navy, and on February 4, 1953, he was succeeded by Robert B. Anderson. During this period of time the plaintiff, in his attempt to secure the necessary responsive pleading from the Government to his suit was distracted from the requirement under the Federal Rules of Civil

Procedure to substitute a party defendant within a six month period. (See app. p. 33A) Realizing that the Federal Rules of Civil Procedure require the abatement of an action on the failure to substitute within six months a party defendant, the plaintiff consulted the Government about a voluntary dismissal of Civil Action No. 1307-52 with the understanding that a new action would be filed against the then Secretary of Navy, Robert B. Anderson. This was agreed upon, and the Government's Motion to Dismiss, which had been filed at the suggestion of the plaintiff, was consented to, the order of dismissal was signed on March 9, 1954 and the new suit, Civil Action No. 1174-54, was filed on March 19, 1954, (App. p. 2A, 34A); **ten days after the original suit was dismissed.** (see app. p. 43A, 5-6) The Government did not answer this complaint until September 27, 1954. (App. p. 9A)

On May 2, 1954, the defendant, Robert B. Anderson, left the office of Secretary of the Navy, and on May 3, 1954, the present defendant, Charles S. Thomas, became the Secretary of the Navy. A motion to substitute party defendants was timely filed (See app. p. 7A); and the order substituting the party defendant was signed July 8, 1954, *said order being consented to by the Government* (See app. p. 8A). There was no other activity in the action until after the matter had been pre-tried at which time the Government again filed a Motion for Summary Judgment on the grounds previously submitted in Civil Action No. 1307-52 and on the additional ground that the plaintiff was guilty of laches. (App. p. 12A)

This matter came on to be argued on the defendant's Motion for Summary Judgment on June 25, 1956, together with the plaintiff's Opposition filed thereto as well as the plaintiff's Cross-Motion for Summary Judgment. In the first instance the defendant said that the plaintiff's claim was barred by laches. In support of this claim the government submitted that the first complaint

filed by the plaintiff abated when he failed to substitute the party defendant when the defendant Dan A. Kimball was succeeded in the office of Secretary of the Navy by Robert B. Anderson. The Government then made the misleading statement that the previous action, Civil Action No. 1307-52, had been dismissed by this present action, when in fact it was the plaintiff who had asked the defendant to take that action. (See supplemental affidavit of plaintiff's attorney, app. p. 34A)

The Court had before it on the hearing of this motion in consideration of this contention the affidavit of the plaintiff (app. p. 32A), the affidavit of the plaintiff's attorney (app. p. 33A) and the supplemental affidavit of the plaintiff's attorney, (app. p. 34A).

The Government, on its second point that no statutory right of the plaintiff had been denied, relied on the affidavit of George A. Holderness which was Exhibit #1 of the defendant's motion, (This affidavit submitted evidence of certain procedures which had been used in terminating the plaintiff, including the letter of March 26, 1951, Exhibit #2, which set out an array of charges against the plaintiff-appellant) the answer of the plaintiff to those charges which was Exhibit #4, the notice setting a date for a hearing by letter of April 3, 1951, Exhibit #5, the notice of action after the hearing by letter of May 12, 1951, which was Exhibit #6, a letter replying to the appellant dated November 28, 1951, Exhibit 9, and a set of the Navy Civilian Personnel Instructions, all being a part of the defendant's Motion for Summary Judgment.

In opposition to this contention the plaintiff showed that there had been a statutory denial in a letter mailed to him by the Navy Department dated May 12, 1951, Exhibit #6 (app. p. 22A), in that this communication merely stated that after consideration of his answer and after the hearing the Chief of the Bureau of Ships, H. N.

Wallin, had "considered all of the facts presented in your case and hereby notify you that you will be removed for cause effective close business 14 May, 1951." Plaintiff contended that this notice denied him every right to present an appeal that could be fairly objective and effective for the reason that the notice had failed to say what charges had been sustained as it was definitely known that only an insignificant charge of tardiness was sustained and no evidence was offered on some charges. This made all the difference because most of the charges would not permit a dismissal under the Navy Department Regulations.

STATEMENT OF POINTS

1. The Court erred in granting the defendant-appellee's Motion for Summary Judgment in granting it on the Government's claim that the action was barred by laches, the plaintiff not having been guilty of any delay whatsoever in the entire proceedings either admisitratively or judicial, and all delay having been the result of the *Government's negligence or willful refusal* to lawfully respond to the pleadings filed by the plaintiff.

2. The Court erred in granting the defendant-appellee's Motion for Summary Judgement in granting it on the grounds that the plaintiff had not been denied any statutory right, the plaintiff-appellant having been denied a statutory right in that the removal was arbitrary.

SUMMARY OF ARGUMENT

The plaintiff-appellant was not guilty of any delay or action that could be deemed to be laches. The lapse of time from the date of the exhaustion of his administrative remedies until the time that the present suit was filed was consumed almost entirely by the defendant-appellee's failure to file the responsive pleadings as required by law.

That the failure to substitute parties was merely cause for abatement and did not bar the present action, and the statute so states. That the failure to substitute party defendants was caused by the defendant-appellee's own negligence in not filing the required responsive pleadings and thereby distracting the appellant's attention from the necessity of substituting the party defendant.

On the second point the plaintiff was denied a statutory right for the reason that after being presented with a long array of charges which under its own Navy Civilian Personnel Instructions were in almost every instance only grounds for some minor sanction on the first alleged violation (as was the case here), the plaintiff-appellant was then merely notified with a blanket statement that the charges had been sustained and he was being removed. On many of these points no evidence whatsoever had been presented, so it must necessarily be concluded that only certain minor charges could have been sustained, and without knowing which charges these might be it was absolutely impossible for the plaintiff-appellant to present an effective appeal.

ARGUMENT

I. The Plaintiff's Claim Was Not Barred By Laches

Although plaintiff's counsel diligently attempted to secure an answer or other appropriate responsive pleadings to the complaint filed in this cause on March 25, 1952, Civil Action No. 1307-52, for unexplained reasons the government did not file such a pleading until July 7, 1952, when a motion almost identical to the instant case was filed. That the motion was ruled on by this Court on October 15, 1952. *See Transcript Easter* v. *Kimball 1307-52.* While the appellee's Motion for Summary Judgment, which the District Court granted dismissing this action, would lead one to believe that the sum and

substance of the action taken by the Court on the original Motion to Dismiss the first action filed, was to require the plaintiff-appellant to file an amended complaint, this was merely incidental to the Court's ruling which was to deny the defendant-appellee's motion in most emphatic terms. (See official transcript of argument of motion in Civil Action No. 1307-52 app. p. 30A). More important still is the fact that the answer to the plaintiff's complaint was not filed until April 7, 1953, although the complaint was filed March 25, 1952; more than one year had elapsed between the filing of the complaint in the first suit and the answer thereto. Thus it clearly shows that the great portion of time between the time of the exhaustion of the plaintiff's administrative remedies on the illegal discharge and the time of the filing of the present complaint was due entirely to the inactivity of the defendant. As was stated in the plaintiff's opposition to the defendant's motion for Summary Judgment: (See app. p. 25A-26A).

> "Another misleading statement appearing in defendant's motion is found on page 2 and reads:
>
> > 'It was the Government's motion that the dismissal on the grounds of abatement was granted.'"

The affidavit of plaintiff's counsel (app. p. 34A) clearly shows that the Government filed the motion to dismiss at the suggestion of said counsel when he discovered the failure to substitute the party defendant, and he told counsel for the Government he would file no objections so the complaint could be declared abated and the present action filed. With the plaintiff's consent to the dismissal of the first action, Civil Action 1307-52, the same was dismissed on March 9, 1954 and on March 19, 1954, ten days later, the present complaint was filed; however, the answer thereto was not filed until September 27, 1954.

So, while the appellee claimed in their motion on which the Court dismissed this action that the plaintiff took no

action from the time that the first complaint was filed until the filing of the complaint in this action which is now on appeal, see transcript Easter v. Thomas, 1174-54 (app. p. 43A, 5-6); in truth it was the Government which took no action until the plaintiff's counsel requested that Civil Action No. 1307-52 be dismissed in order that the complaint in this case could be filed.

Because of the facts set forth above, and because the doctrine of laches is an equitable doctrine, the defendant's points and authorities on the question of laches become totally inoperative. Never was there a more classical case where the maxim,

> "He who seeks equity must do equity" and "He who comes into equity must come with clean hands"

demands application. For it is elementary that these doctrines signify that a litigant will not be heard to claim equity where his own conduct has been inequitable. *National Fire Insurance Company* v. *Thompson 281 U.S. 331.*

The court below, in granting the defendant's motion was declaring the plaintiff guilty of laches for failure to substitute a party defendant, when for the greater period of that time the Government had not even filed an answer to the complaint. It should be noted that the very wording of Rule 25d Federal Rules of Civil Procedure in stating that the action abated on failure to substitute within six months makes it extremely clear that had Congress intended this failure to be the end of the cause of action then it would have provided in this rule that the failure to substitute would be a bar to the action and not to an abatement. (Rule 25d, Federal Rules of Civil Procedure) Moreover, the case of *Snyder* v. *Buck,* 340 U.S. 15, specifically grants the party whose suit has abated the right to start over when there has been failure to substitute. *The question of whether laches is present after a person has started over would in all cases de-*

pend on the circumstances and facts surrounding each case. Had the Supreme Court felt that failure to substitute within a six month period was in and of itself a bar to another action, it certainly would have so stated instead of saying exactly to the contrary that a new action could be brought.

Nor, could the appellee claim that failure to substitute had been detrimental to the Government because the affidavit of the plaintiff's counsel (app. p. 35A) clearly shows that for the greater part of the period in question the plaintiff was employed at a salary greater then that he had received as a government employee, and that time was not detrimental to the government except for the loss by the government of the services of the appellant who was rated a P-5 in 1946 (app. 45A) yet was doing meritorious services beyond his rank and duties for a P-3 [Trans. p. 122), Transcript of Removal Hearing 17 April 1951]

> "Easter can do this job better than any of us, because he knows ships. He knows drafting. This *combination is rare,* in my opinion, *in the stability section."*

His insistance in designing the merchant naval vessel (a beneficial suggestion) created on his own time, and that witnesses and other parties are still available.

II. A Statutory Right of the Plaintiff Was Denied In Separating Him From His Position With The Navy Department

The Government's position that no such right was ever denied was passed upon by the United States District Court for the District of Columbia *in this very matter* through Judge Luther Youngdahl. This took place when the Government argued a previous motion almost identical to the one which was granted in this cause in the first action filed by the appellant, Civil Action No. 1307-52.

When that motion for Summary Judgment was argued Judge Youngdahl ruled:

> " • • • it seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained • • • ."

It is vital to note that not only has the Government once submitted the same question to the Court on Appellant's discharge, but their previous motion was supported with substantially the same exhibits, affidavits and authorities and despite the fact the Court emphatically denied the motion, it is now being submitted again.

The Government's position on the jurisdictional question as stated in the Motion to Dismiss admitted that the Court does have jurisdiction in cases where the Federal employee was dismissed contrary to the statutory requirements of Title 5, Section 652, LLOYD-LaFOLLETT Act. As was stated by this Court in the case of *Powell* v. *Brannan, 91 U.S.App.D.C. 16,* judicial relief is available when those statutory procedures have been departed from,

> "When there has been a substantial departure from applicable procedures, a misconstruction of government legislation, or like error going to the heart of the administrative determination, a measure of judicial relief may, on occasion, be obtainable."

The same principal is announced in *Deake* v. *Pace, 88 U.S.App.D.C. 50.*

The defendant-appellee's theory in this matter can be clearly understood by a reading of page 4 of the Government's motion beginning with paragraph #6 and continuing through that page. There, the Government poses the question, "What are the procedures required by the act?"

Then the question is answered by saying a notice in writing is required, a copy of the charges, and a reasonable time to file a written answer. (Actually, there is more in the actual wording of the statute than these requirements, but for the point being made, these set forth are sufficient.) Then, the Government says that the exhibits show that these things were done. To state it another way, the Government is saying that if the particular agency goes through this form, the discharged employee cannot, under any circumstance have recourse to the Court, or that the statute is one of form, and not of substance, because under this theory the particular officers concerned could trump up any false charges to discharge an employee, for purely personal reasons, and then follow the form, and say the discharged employee was without judicial relief.

Although such a contention reduces the statutes to a fallacy, it is the position the Government has taken in this matter from the very beginning, even in the first action before it was abated, and the one that Judge Youngdahl stated was not correct in the discharge of this employee or any employee who comes within the provision of the statute.

The most important point in this matter is one which the defendant claimed in the Court below was being raised for the first time, but which the transcript of the hearing before Judge Youngdahl conclusively shows was the very contention upon which a previous motion for Summary Judgment in the first action was denied, namely the fact that the agency in discharging the plaintiff merely informed him that he was being removed without telling him which of the many charges against him had been sustained. (App. p. 22A) The letter from the Navy Department dated March 26, 1951, (app. p. 13A) shows the many charges which were hurled against the appellant. The Navy Civilian Personnel Instructions pages 29-36 show the range of the penalties for the charges. Penalties

vary according to the graveness of the charge and the number of times the offense has been committed. Therefore, it would be impossible to prepare an appeal; but the discharged employee here was forced to file what purported to be an appeal but which for the fact he did not know which charges had been actually sustained against him really could amount only to a general prayer for relief to the Secretary of the Navy. In paragraph 9 of the defendant's answer filed April 7, 1953 and the answer to the complaint in this suit, defendant admits, and in fact stated, *"that plaintiff was not furnished with findings of fact."* (app. p. 10A). This is the reason Judge Youngdahl asked the government counsel the following question when this motion was being argued in *Civil Action No. 1307-52:*

> " • • • THE COURT: Don't you think, as long as the Government provided specific charges, and that after that you indicated to him what charges—
> MR. STRICKLER: I think it might be advisable, Your Honor, but not required under the statute. I say that by referring to the code itself.
> THE COURT: Just on the basis of the code?
> MR. STRICKLER: I say it would be advisable.
> THE COURT: How does he expect to come into Court and raise a defense on a general statement? He doesn't know what it is. A charge of insubordination requires an entirely different charge than these other charges. It seems to me that as a basis for an adequate hearing the Government should indicate on what basis he is being discharged.
> MR. STRICKLER: As I say, if I were giving advice to the agency on which charge, I would say yes, but counsel has stated to the Court that there was a frame-up, and they had merged all charges to get rid of him. If that is true, Your Honor, this Court has no power, no jurisdiction or authority to inquire into his guilt or innocence.
> THE COURT: Unless that should fit into the pattern of arbitrary action, and it should appear in addition that the action was not in accord with the rule, that would be corroborating testimony."

Furthermore, it is clear that Judge Youngdahl understood that this was not adequate notice within the contemplation of the statute when he said, on page three of the partial transcript:

> " • • • there would be a serious question in my mind whether this is adequate notice, even in the statement, that might not indicate arbitrary action on the part of the Government • • •"

Finally, the plaintiff submits, not to be repititious, but for point of emphasis, what Judge Youngdahl said in ruling upon the motion on October 15, 1952:

> "THE COURT: Will you read that letter for me counsel? What is the nature of that?
>
> MR. STRICKLER: It reads:
>
> > 'By reference (a) you were notified of the proposed action to terminate your employment for cause. By reference (b) you replied to the charges contained in reference (a) and requested a hearing. A hearing was granted, a board was appointed by me to hold the hearing and make recommendations to me and hearings were held on 5, 9, 10, 17 and 18 April, 1951. I have considered all the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951.'
>
> THE COURT: That is what I had in mind. It seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained. I think under all the circumstances in a case of this nature the Court should not grant summary judgment, but should let it go to trial.
> You may draw an Order."

The appellant respectfully submits that the Government's motion was properly denied when it was first argued before Judge Youngdahl and that at that time

the Court pointed out where the Government had failed in properly discharging the plaintiff according to law. For the same reason the appellant now urges this Court that the defendant-appellee's motion for Summary Judgment in this case should have been denied.

The history of the decisions of this Honorable Court is an example of the fact that what the Court is always interested in is justice under the law. For this reason the Court's attention is called to the fact that on March 31, 1950, an efficiency rating on appellant in his position from which he was discharged the following year rated him as "very good" and all the various categories for rating the employee on that report show + if outstanding, +(6) *Attention to pertinent detail*, +(12) *Rate of progress on or completion of assignments*, + (16) *Cooperativeness* and adequate, in meeting and dealing with others, initiative, etc. (app. p. 44A) Likewise, on March 31, 1949, he had been rated "very good" and yet on March 26, 1951, he was confronted with the array of charges, most of which there was never any evidence presented in support of, yet the Chief of the Bureau of Ships stated in his letter of May 12, 1951 (app. p. 22A) that he had studied the transcript of the hearing and the charges were sustained.

Appellant should not be victimized for the various irregularities, and deliberate efforts of Wright, appellant's supervisor, to tarnish, discredit and discolor appellant's ability, industry, efforts and final results of appellant's works and for the motives for the arbitrary action taken in firing the appellant for his patriotic diligence in conceiving, designing and proposing the adoption of appellant's beneficial suggestion of a *Merchant Naval Vessel* (see app. p. 40A para. 13) which dismissal has caused undue hardship by his being blacklisted by many places who would not employ appellant "until status was cleared with Navy" when at the same time begging for drafts-

men, and the large expense incurred in this litigation, anxiety, and ridicule.

The inadvertence of counsel in not substituting party defendant in the original cause due to his anxiety in waiting for defendant's counsel to answer the proceedings (app. p. 34A) and the disinterest of the lower court in not reviewing the records etc. before ruling on Summary Judgment in favor of Appellee, Defendant.

That testimony clearly shows appellant was conscientious and industrious. When appellant was prosecuting his fourth stage of a grievance proceeding (app. p. 20A line 16), which he was coerced into by a Civil Service representative and the O I R as a duty, for the good of the Navy Department and the country; the appellant's supervisor Charles L. Wright stated "Andy, you are an asset to this institution, I and the section will assist you in what you are doing". Appellant had produced meritorious work while employed by the Navy Department and devised a multipurpose interchangeable type of ship which idea was beyond his call of duty, whereas there are government personnel in Code 444 and elsewhere, military as well as civilian, who sleep on the job, use the office for personal interests and business; and Comdr. Ramsey, who damned this country, and told Wright "if you don't have anything on him, frame him" (referring to appellant); supervisors (Wright and Moore) who sarcastically commented on the Bureau's administration and whose indecisions required 2 men to take 2 months in changing a model plan (app. p. 17A Line 15); and that a supervisor, Charles L. Wright, was required to write up his job orders due to indecisions (app. p. 21A Line 7) and who was thanked by the administrative officer for his cooperation in the removal action and was promoted to P. 6 and transferred to submarines where he had no experience whatsoever.

Appellant's former services in Code 459, where uncontested records show he devised, planned and drew the first or basic plans of most of the Naval Auxiliaries,

73% of the basic designs and 50% of the actual production as key engineer in a section of 8 men assigned to do the same work and who worked overtime, evenings, Saturdays and Sundays without compensatory pay; whose supervisors were always at odds, all were foreign born, and Samuel B. Crosby, the section chief, permitted Harry Cox, another foreign born employee, to take a two-hour walk every day without charging it against his leave, and often said that "he (Crosby) would be there long after these SB's [(military officers) my own] are gone and forgotten", and who gave another foreign born employee, Breinert B. Madsen, a $500.00 a year raise so he could buy a $25.00 a month bond, this same employee often told the appellant "You are in my way. (App. p. 41A para. 15). I could go places if it were not for you", that he hated the British, the capitalists and the supervisors, this same employee is at present in charge of arrangements in the Navy Department, yet is not a designer, he devoted much of his work day in making out income tax forms and making studies for building a house, and altho he would be at the office before start of work he would immediately leave the room every morning for 15-20 minutes. And whereas Samuel B. Crosby ignored his assistant Robert W. Bruce's objections to the government paying a design agent $185,000 plus $7000 fee for removing the Government title stamp and reproducing by C B process one of appellants plans and submitting it to the government under their stamp. Appellant was charged two hours leave to carry his exhibits to and by the request of the Board of Awards of the Navy Department in reference to the proposed merchant military vessel, a Beneficial Suggestion (app. p. 37A 146)

The following partial questions to and answers from government supervisors and employees, taken from the transcript of the Removal Hearing, (in reference to the charges against Andrew J. Easter, Appellant), held at the Navy Department, identified in the original record on file in the Court of Appeals, as exhibit #13.

10 April 1951

Questions to Mr. Moore & answers,

pg. 44—has Easter ever been disrespectful to you? No, he hasn't.

pg. 51—did anyone ever come to you and tell you that he was annoying them? I don't recall that anybody ever did.

17 April 1951

Questions to Mr. Shapiro & answers,

pg. 38—I have never noticed that he was disrespectful. p. 43—were these changes made willingly? Oh, yes. p. 47—was particularly argumentative or troublesome — ? No, sir. p. 55—ever made a nuisance of himself to you? No, sir. p. 57—any of these discussions as insubordinate on his part? No, sir.

Questions to Mr. Christensen and answers,

p. 80—Easter do things—as a nuisance — ? No.

p. 82—affected your morale? No, sir.

p. 83—affected morale of others — ? No, sir.
——found an abnormal number of errors? No, sir.

p. 84—overall appraisal of—work—? He has done a number of jobs with not much assistance.

—caliber of work—? I would say, good.

p. 92—does that appear like a good job (DD 927) to you? Yes, sir. It looks like a very nice job. p. 95 Is that good work (CVA-58)? p. 96—that was perfect.

p. 97—Is that a good piece of drafting work, (Monograph)? This looks fine to me. p. 101 impress you as being a good piece of work (CVE-105-127)? Yes, That is eminently a good piece of work. p. 103—ever refused to make any corrections — ? No, sir. p. 104. types of work. p. 106 Is he capable of making these calculations? has done all of those that I said. p. 108 Easter's work is very, very good——. p. 109 When we come to the cal-

culations, — he nevertheless has done it, again and again. — said to his praise, ——, has applied himself and now makes calculations? Oh, yes. p. 110. He had done all these calculations. p. 113 Have had arguments with him? Never. p. 116—did . . some . . elaborate calculations — ? That is right. p. 118 Yes, sir, I can say it it good. I will not therefore say that he cannot make a mistake. p. 121 In general, he does all types of work. p. 122—can do this job better than any of us ——.

p. 124 He has been chosen for doing all the later models. p. 131 At times very interested, very interested. p. 137 has gotten along very well with all of us up there.

18 April 1951

Easter p. 1-131—did all types of work—integrations—classified work and purpose—gave up vacation—known as pump handle—work horse—DD 927—exceptional work —no assistance—Le Roy lettered—drawn to exact scale—directive directing 3/40 inch=1 ft.—which had to be converted on a calculating machine to a workable scale in every incident. — did all the different types of work—(app. p. 17A) including calculations—and drafting for 4 different checkers—who specialized—and handed work to me—piecemeal and at various stages.

The Chief of the Bureau of Ships, the supervisors and others were being promoted, some with commendations, on the ingenious efforts (the Baby Flat Top of the Navy) and production of the appellant, who was at the same time being intrigued against and beaten down, and is still being discredited throughout these proceedings.

It is alleged that the arbitrary firing of plaintiff was prompted by his asking Questions at 440 forum Dec. 7, 1950 reference his combined, interchangeable, multipurpose Merchant Naval vessel (app. p. 20A Line 17) and his dili-

gence in submitting same for adoption which would aid peace on earth and eliminate public debt created by military appropriations by the governments of the world.

The action of this court pertaining to the action of the court below would either tend to prevent further and continuing arbitrary practices by administrative officials and their assistants, which practices retard initiative of present conscientious government employees, who are interested in the welfare of this nation, from continuing to do so, in spite of the many notices and requests for beneficial suggestions, etc.

CONCLUSION

It is respectfully submitted that the plaintiff was not guilty of laches and the record has evidenced in the joint appendix and from the matters pointed out in this brief that the rights of the appellant were definitely denied him in his separation from the Department of the Navy. For these reasons it is respectfully submitted that the action of the U.S. District Court for the District of Columbia in this matter be reversed and remanded.

ANDREW J. EASTER
In Proper Person
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Washington 9, D. C.

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,631

ANDREW J. EASTER
Appellant

v.

CHARLES S. THOMAS
Secretary of the Navy
Appellee

Appeal from the United States District Court for the District of Columbia Circuit

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JOINT APPENDIX

26 Filed Mar 19 1954 Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-'54

ANDREW J. EASTER
2801 Adams Mill Road, N. W.
Washington, D. C.
Plaintiff

v.

ROBERT B. ANDREWS
Secretary of the Navy
Room 42710, Pentagon
Washington, D. C.
Defendant

COMPLAINT TO HOLD UNLAWFUL AND SET ASIDE AGENCY'S ACTION

1. This Court has jurisdiction of the subject matter by virtue of Title 5, Section 652, U.S.C.A., the allegations of this Amended Complaint being that the defendant's agency has failed to comply with the provisions of this statute.

2. The plaintiff has been an employee of the Department of the Navy twelve years. During this employment he made advancement and rendered service above average as is borne out by his efficiency ratings over this period.

3. On November 28, 1951, by letter from the Under Secretary of the Navy, the plaintiff was notified that his appeal from the Bureau of Ships was denied and it was his final action in connection with his appeal. Therefore, plaintiff has exhausted his administrative remedies.

4. By virtue of a letter of May 12, 1951, the plaintiff was notified by Chief of Bureau of Ships, Department of Navy, that he would be removed for cause on May 14, 1951.

5. The letter referred to in paragraph 4 makes reference to the plaintiff's request for a hearing, and to the fact that a hearing was had on April 5, 9, 10, 17, and 18, of 1951; and further states "I have considered all
27 of the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951".

6. By letter of March 26, 1951, the Chief of Bureau of Ships notified the plaintiff that that Bureau was considering termination of the plaintiff's employment. The letter then enumerated certain charges on which the referred to determination was to be based. These charges were:

(a) Unsatisfactory performance.

(b) Insubordination.

(c) Disrespectful attitude toward supervision.

(d) Unreliable attendance.

(e) Your lack of interest in your work and the overall effect of your expressions upon the morale of other employees.

This letter of March 26, 1951, was the only warning that this agency had ever given to the plaintiff that his services were not satisfactory.

7. The Department of Navy has formulated regulations for the purpose of disciplinary action, removal and prohibition of its civil employees; such regulations being titled Navy Civil Personnel Instructions or N.C.P.I. Said instructions are to uniformly guide the taking of disciplinary action against and removal of all civil employees of the Navy Department.

8. The charges enumerated in paragraph 6 are specifically dealt with in the "Instructions" referred to in paragraph 7. The charge of insubordination provides for removal without warning. The four charges provide for action other than removal on first warning. The only conclusion being that if the Board set up to hear the evidence and the official who reviewed that evidence and notified the plaintiff of his termination followed the department's own instructions there would, of necessity, have had to have been a finding of insubordination to remove the plaintiff under these instructions.

9. After a protracted hearing on the several aforementioned charges, only one of which the plaintiff could have been discharged, there was furnished to the plaintiff absolutely no findings of fact from the involved testimony nor was there delivered to him any decision that would enable the plaintiff to know which of the divers acts of which he was charged it had been found there was evidence to sustain, and just what evidence sustained what charge. This was completely arbitrary, because if the Board, found, as they might well have done, that certain evidence was sufficient only to sustain a finding of guilt on any or all the charges, excluding the charge of insubordination, then the plaintiff could not have been discharged under the Navy Department's own regulations. This conduct on the part of the Agency was a violation of the procedure as established by Title 5, Section 652, U.S.C.A., as it is arbitrary, capricious and an abuse of discretion and otherwise not in accordance with the law.

10. The letter of May 12, 1951, referred to in paragraph 5 and the language of that letter as set out in paragraph 5 is couched in such general terms that it was impossible for plaintiff to know on what evidence the decision was based and on which charge he was being dismissed. Therefore, he could not know if he was being

discharged for the one and only charge that under the Navy Department's regulations provided for dismissal on first warning. Plaintiff was thereby deprived of his employment without due process of law, and contrary to his Constitutional rights, abuses, privileges or immunities, and therefore, such action was in violation of Title 5, Section 652, U.S.C.A.

11. The plaintiff further alleges that not under any circumstances could he have been lawfully discharged; because even if the decision, as reported in the letter referred to in paragraph 5, had clearly set out that it had been found that the one charge that the plaintiff could have lawfully been discharged on, i.e., insubordination, was sustained by the evidence; such a finding would be set aside by this Honorable Court because under Title 5, Section 652, U.S.C.A., this charge would be unsupported by substantial evidence or any evidence. The evidence submitted in form of testimony of persons in a supervisory capacity and all evidence touching on the charge of insubordination in no manner substantiates the charge of insubordination.

29 12. The real cause of the discharge of the plaintiff was the result of a personal disagreement between a supervisor or supervisors and the plaintiff, not anyway related to the employment or not anyway affecting the Agency. Therefore, Title #5, Section 652, U.S.C.A. was used by the defendant as a subterfuge to unjustifiably discharge the plaintiff.

WHEREUPON? the premises considered, the plaintiff prays this Honorable Court to hold unlawful and set aside this Agency's action, findings and conclusions, and

for such other and further relief as to the Court may seem meet and proper.

/s/ Andrew J. Easter
Andrew J. Easter

/s/ Wesley E. McDonald
Wesley E. McDonald
Attorney for Plaintiff
602 Arlington Building
Washington, D. C. DI 7 9140

/s/ Austin Newton
Austin Newton
Attorney for Plaintiff
602 Arlington Building
Washington, D. C. DI 7 9140

Andrew J. Easter, being duly sworn on oath, deposes and says that he has read the foregoing amended complaint by him subscribed, that he knows the contents thereof, and that the matters and things therein stated he verily believes to be true.

/s/ Andrew J. Easter
Andrew J. Easter

Subscribed and sworn to before me this 10 day of March, 1954.

/s/ Harry P Motter
Notary Public

My Commission Expires, First Monday in January 1960

HARRY P. MOTTER
Alderman 13th. Ward
1925 DERRY ST.,
HARRISBURG, PA.

• • • •

34 Filed July 8, 1954

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER

Plaintiff

v.

ROBERT B. ANDREWS
Secretary of Navy

Defendant

MOTION TO SUBSTITUTE PARTY DEFENDANT

Comes now the plaintiff, Andrew J. Easter, by and through his attorney, Wesley E. McDonald, and moves this Honorable Court to substitute Charles S. Thomas, Secretary of the Navy, as defendant in this cause in place of the party Robert B. Andrews; the plaintiff says that when this cause was filed Robert B. Andrews was then serving as Secretary of the Navy, but within the past six months he has resigned from that office and Charles S. Thomas has been appointed by the President to replace the said Robert B. Andrews as Secretary of the Navy.

/s/ Wesley E. McDonald
Wesley E. McDonald
Attorney for Plaintiff
1025 Vermont Avenue, N. W.
Washington, D. C.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION

Rule 25(d), Federal Rules of Civil Procedure

/s/ Wesley E. McDonald
Wesley E. McDonald

This is to certify that a copy of the foregoing motion and points and authorities in support of motion was mailed, postage prepaid, this 2nd day of July, 1954, to the Assistant United States Attorney at his office address, United States District Court House, Washington, D. C.

/s/ Wesley E. McDonald
Wesley E. McDonald

• • • •

35 Filed JUL 8 1954 Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER

Plaintiff

v.

ROBERT B. ANDREWS
Secretary of Navy

Defendant

ORDER SUBSTITUTING PARTY DEFENDANT

The motion of the plaintiff to substitute party defendant having come on for determination at this term of Court, and it appearing to the Court that Robert B. Andrews, the defendant in this cause, is no longer serving as Secretary of Navy, and he ceased to hold that office within the past six months, and his successor is Charles S. Thomas, it is by the Court, this 8th day of July, 1954,

ORDERED, that the plaintiff's motion to substitute Charles S. Thomas as defendant for Robert B. Andrews

in the above entitled cause be and the same is hereby granted.

/s/ Alexander Holtzoff
JUDGE

Consent:
Frank H. Strickler
Asst. U. S. Attorney

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Filed Sept. 27, 1954 Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER,
Plaintiff

v.

CHARLES S. THOMAS,
Secretary of the Navy,
Defendant

ANSWER

First Defense

The complaint fails to state a claim upon which relief may be granted.

Second Defense

The subject matter of the complaint is barred by the doctrine of laches.

Third Defense

Answering the numbered paragraphs of the complaint, defendant avers:

1. He is not required to answer the allegations contained in paragraph 1 of the complaint.

2. It is admitted that plaintiff has been an employee of the Department of the Navy for twelve years. The remaining allegations of paragraph 2 of the complaint are denied.

3. Admitted.

4. Admitted.

5. Admitted.

6. The allegations of paragraph 6 of the complaint are admitted except for that allegation contained in the last sentence, which is denied.
51

7. Admitted.

8. Defendant admits that the charges enumerated in paragraph 6 of the complaint are dealt with in the instructions referred to in paragraph 7. The remaining allegations of paragraph 8 are denied.

9. Defendant admits that there was a protracted hearing and that plaintiff was not furnished with findings of fact. The remaining allegations of paragraph 9 of the complaint are denied.

10. Denied.

11. Denied.

WHEREFORE, defendant demands judgment together with the costs of this suit.

/s/ Leo A. Rover
LEO A. ROVER
United States Attorney

/s/ Oliver Gasch
OLIVER GASCH
Assistant United States Attorney

/s/ Frank H. Strickler
FRANK H. STRICKLER
Assistant United States Attorney

/s/ George E. Hamilton
GEORGE E. HAMILTON
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Answer was made upon plaintiff by mailing a copy thereof to his attorneys, Wesley E. McDonald and Austin Newton, Esquires, 602 Arlington Building, Washington, D. C. this 27th day of September, 1954.

/s/ George E. Hamilton
GEORGE E. HAMILTON
Assistant United States Attorney

52 Feb. 8, 1956

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER,
Plaintiff

v.

CHARLES S. THOMAS,
Secretary of the Navy,
Defendant

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant by his attorney, the United States Attorney, and moves this Court for summary judgment herein for the reason that there is no genuine issue of material fact, and defendant is entitled to judgment as a matter of law. Attached to this motion and made a part thereof are Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

/s/ Leo A. Rover
LEO A. ROVER
United States Attorney

/s/ Oliver Gasch
OLIVER GASCH
Assistant United States Attorney

/s/ Frank H.Strickler
FRANK H. STRICKLER
Assistant United States Attorney

/s/ Kitty Blair Frank
KITTY BLAIR FRANK
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Motion for Summary Judgment, Exhibits 1 thru 10, and Memorandum of Points and Authorities in support thereof, has been made upon plaintiff by mailing a copy thereof to his attorneys, Wesley E. McDonald and Austin Newton, 602 Arlington Building, Washington, D. C., this — day of February, 1956.

/s/ Kitty Blair Frank
KITTY BLAIR FRANK
Assistant United States
Attorney

EXHIBIT 2

LL/EASTER/A.J.
26 March 1951

To: Andrew J. Easter, Code 444
Subj: Removal

1. The Bureau is at present considering termination of your employment for cause.

2. The specific charges against you are: (1) Unsatisfactory performance (2) Insubordination (3) Disrespectful attitude toward supervision (4) Unreliable attendance and (5) your lack of interest in your work and the overall affect of your expressions upon the morale of other employees.

3. Upon your assignment to the Stability Section in 1946, you were informed by memorandum that certain knowledge was necessary to perform your assigned duties and you were further advised how that knowledge might be obtained. However, to the present date you have acquired so little of the knowledge specified, that you must be assigned routine tasks and cannot be relied upon to satisfactorily complete a task within a reasonable time commensurate with your grade and salary.

4. Your insubordinate and disrespectful attitude toward your supervision has apparently continued for some time. Corrections of errors in your work have resulted in lengthy, heated, time consuming arguments with your supervisors, during which you have frequently, openly and loudly accused them of incapability. On other occasions you have refused to put forth a special effort to meet work deadlines on the claim that your special efforts in the past went unrewarded. You have refused to make modifications on assigned work on the claim that the work should have been assigned correctly in the first place even though it was explainted to you that later developments required that modifications be made. Discussions with your supervisors regarding your attitude have resulted on many occasions in threats made by you of law suits, appeals and physical violence.

5. You are frequently absent from your desk without permission for long periods of time. From information received through various sources, it appears much of this time is spent merely visiting other sections of the Bureau to talk to other employees of your grievances against the Bureau and its personnel and to air your personal troubles. You have left business discussions in your own section to pursue this activity of yours. You have frequently spent periods of time away from the building without permission. You apparently consider that your own personal matters take priority over your work assignments. It is considered that your lack of interest in your work and your penchant to speak adversely of the Bureau and its supervisors have a detrimental effect on other employees particularly those unacquainted with the full situation.

6. In January 1951, upon being informed by your supervisor that you would be given an "Unsatisfactory" Performance Rating unless improvement was shown, you defiantly informed him that you were not making any effort to perform satisfactorily, had no intention of improving and that you hoped that the "Unsatisfactory" rating would bring to a "head" a matter with which you were concerned.

Such attitude on the part of any employee cannot be condonned.

7. You have the privilege of replying in writing within five (5) days of the date of these charges to show cause as to why your services should not be terminated and to request a hearing if you so desire. If you desire a hearing, you may be represented by any person of your choice and you may bring witnesses who have a direct knowledge of the circumstances resulting in the preferral of those charges.

8. Your reply must be in writing and must be received in Code 263 on or before close of business 2 April 1951. Failure to reply or an unsatisfactory reply will result in your termination for cause, effective close of business 10 April 1951.

H. N. Wallin
Chief of Bureau

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66 EXHIBIT 4

Filed Feb. 8, 1956

FORMAL ANSWER TO LETTER DATED MARCH 26, 1951, FROM THE BUREAU OF SHIPS, NAVY DEPARTMENT, TO ANDREW JOHNSON EASTER, CODE 444, SUBJECT, REMOVAL

Now comes your employee, Andrew Johnson Easter, and by way of answer to the allegations and charges contained in the letter of March 26, 1951, directed to him by the Bureau of Ships, Navy Department, says:

1. *UNSATISFACTORY PERFORMANCE*

(a) Job Description

Under General supervision with considerable latitude for the exercise of independent judgment in determining methods to be employed, but respon-

sible for the technical accuracy of results and correctness of methods employed:

Makes stability calculations in connection with Naval surface vessels which involve computations based upon inclining experiment data; specifically, reviews inclining experiment data for both accuracy of results and satisfactory conditions; determines effect of alterations to surface vessels on stability and displacement and investigates and suggests corrective measures.

At no time was any project or assignment of work made either written or orally under the above description.

Employee had had experience in working independently on assigned projects and work.

Employee is not qualified through lack of previous experience, training or opportunities to make calculations in connection with Naval surface vessels which involve computations based upon "Inclining Experiment Data", etc., as set forth in the job description hereinabove described and as delineated in memorandum of 6 May 1946, because as shown in organization memorandum No. 444-102-48, 5 March 1948, employee was and has been assigned to Code 444A, scientific, whereas memorandum referred to in paragraph 3 of the Chief of Bureau of Ship's letter of recent date and enclosure (A) referred to in memorandum, pertain to work assigned to Code 444B and 444C.

67 Employee denies that part of paragraph 3 having to do with his acquisition of knowledge, the assignment only to routine tasks and his failure to satisfactorily complete a task within a reasonable time commensurate with his grade and salary. In answer to these allegations employee states during his assignment to his present employment he has satisfactorily completed with commendation a number of specific assignments of all the various types of work produced and performed by

the Stability Section, 444A Scientific, which work was of the same type assigned to other employees with higher grades.

With respect to the allegation of assignments to only routine work, employee respectfully states that since being assigned to his present position in 1946 he has completed eight Stability model plan assignments, consisting of the following: (1) BB 61 Battleship; (2) CL 55 Light Cruiser; (3) CLC 1 Task Fleet Command Ship; (4) DE (TE) Escort Vessel; (5) *DD 927 Destroyer; (6) AM 57 Mine Sweeper; (7) ASW Anti Submarine; (8) CA 134 Heavy Cruiser. During the same period of time when the above was completed a total of approximately twelve projects of this type were completed in the Stability Section, which consists of ten employees. On these assignments he established a procedure which caused the work to proceed in an orderly manner.

At present he has a professional rating of GS-12 on the U. S. Civil Service Commission, 1946 Register. He made calculations and stability curves for intact and damaged stability characteristics for the LSD, Landing Ship, Dock, AGC Amphibious Force, Flag Ship, Aux., CA 1 34 Heavy Cruisers, CLC 1 Task Fleet Command Ship, CVE 105 Aircraft Carrier Escort, AO 6 Oil Tankers, Aux. He has prepared curve of form and cross curves of stability for BB 61 Battleship, ARS 38 Salvage Vessel, AV 4 Seaplane Tender, YMS 1 Mine Sweeper. Trim and "V" lines for CL 144 Light Cruiser, CVE 105 Aircraft Carrier, Escort, Bon jean curves for PCE Patrol vessels, and extent of damage study for CAV 50 Aircraft Carrier, heavy. *Compiled data from model test for CV9 Aircraft Carrier, heavy, CVE 105 Aircraft Carrier, Escort, which assignments were time consuming. *Made Monograph and cross curves for CVL 48 Aircraft
68 Carrier, small. All assignments were completed within a reasonable time. His efficiency rating for 1950 specified plus for completion of work.

•Assignments completed in 1950, including the following: Cross Curves for Upper deck, Super structure omitted, AO 41, Drawing of critical flooding from one and two torpedo hits and curves of statical stability from the CV 9 Model test, DD 692 Model Tests compared with calculations.

Checked intact integrations of Main to Poop decks AO 6. Drew large reproduction of Fig. I-7-9 for Commander Hausman for lecture criteria for intact, damaged and topside weights. Drew water and buttock lines on model for class use. Drew specific curve from inclining experiment.

2. *INSUBORDINATION AND DISRESPECTFUL ATTITUDE TOWARD SUPERVISION.*

This probably refers to the following instance. He had prepared a model plan of DD 927. Similar plans were marked "restricted" for security reasons. The supervisor and checker made five changes in the plans after same had been checked and reviewed. The changes were due partly to indecision. The requested changes were made, then he was instructed by the supervisor through the checker to remove the security block. This he refused to do due to the fact that in his opinion the plan should have been protected by security markings, and the repeated changes tended to demoralize him. His efficiency rating sheet for 1950 shows plus for cooperativeness.

3. *UNRELIABLE ATTENDANCE*

His leave record for this rating period is as follows: Annual—14 days, 4 hours

(a) 6 days, 6 hours, for preparation of and court proceedings.

(b) 3 days, 5 hours, Interaal Revenue consultations.

69 (c) 4 Hours for advancing idea pertaining to ship.

(d) 3 days, 6 hours, for personal matters.

Sick Leave—16 days. (9 used since December 27, 1950, after the first 90-day warning notice).

4. *ABSENCE FROM DESK.*

During this rating period at no time has he had brought to his attention the fact that he was away from his desk for unusual lengths of time. Usually when he was absent from his desk he was on government business. With respect to his criticism of his supervisors he has expressed his opinion of their personalities, ability and administration. This has been to other employees and supervisors who have concurred in his opinion. His expressions were his opinion but were not used with contemplated malice. The supervisors are over-sensitive when confronted with criticism.

These type of supervisors have tended to demoralize the employees under them because of their lack of ability, etc., and in most cases are inferior to the Engineers they supervise and administer.

In December 27, 1950 and January 11, 1951, on being informed by the supervisor that he would be given a non-satisfactory performance rating, the employee refused to initial the written notice as protest and objection to the notice, which notice he considered unwarranted and especially that he had never been informed or had there been any indication that his services were not satisfactory and that there was no warning as required by NCPI 5-1 as follows:

> NCPI 5-1. THE WARNING.—The performance rating of 1950 provides that no employee shall be rated unsatisfactory without a ninety-day prior warning and a reasonable opportunity to demonstrate satisfactory performance. The regulations of the Civil Service Commission prohibit the rating of performance as deficient with regard to any work requirement that was not known by the employee or which the employee had not been given a fair opportunity to meet. Before giving a warning for unsatisfactory

work performance, an examination should be made to determine the cause of the unsatisfactory performance, and corrective action taken, whenever possible. Should corrective action fail to improve performance sufficiently or should the taking of corrective action be impractical, the immediate or higher supervisor will give the employee the warning, in writing.

His previous rating had been very good, and in his estimation work performed by him in this year was of the same caliber and volume which had been performed during the previous year. It is also to be noted that on October 18, 1950, the employee had filed a request for rehearing on 1945 and 1946 efficiency ratings before the Navy Department Board of Review and had filed a grievance appeal, Fourth Stage, in the Navy Department, and had re-presented his all purpose combat carrier to Vice-Admiral Cochrane at the 440 Forum, 7 December 1950 which was returned 26 December 1950.

The detailed criticisms made of the employee on January 11, 1951, Notice of Warning, are very general and difficult to analyze. Under adaptability are set up the following:

Lack of willingness to learn.

To start work on time.

To spend a reasonable amount of time in the office.

To concentrate on the job.

This is a repetition of one item set out under quantity of work in the same letter. The volume of work performed by the employee compares favorably with other employees in the office. It has been necessary for the employee to learn specific methods of calculation to perform the duties of his position. Also in this letter there is a criticism that he fails to get along with fellow workers, and fails to maintain harmonious relations in the office. In this respect no particular unfriendliness exists between the employee and his fellow employees. He has

not disrupted the office but has attempted to cooperate in a manner which would lend toward harmonious operations. He is accused of a lack of enthusiasm and a tendency to waste time and to reduce general morale of others, which he denies, and states that the allegation in paragraph 6 is absolutely untrue.

71 If there were any lengthy, heated or time consuming arguments in reference to any corrections of errors in the employee's work the arguments were among the checkers and the supervisors due to indecisions, which has made it necessary for the employees to require the supervisor to delineate his desires in a written job write-up. Employee disregards other statements in paragraph 4 as untrue and that there were no developments that could affect incorrect assignments except indecisions and that periods of time away from the building were very rare and in every case accounted for.

He has *not* been accorded the privileges of the training courses set up by the Bureau nor opportunities to travel to other agencies in constructing or testing experimental models of which he has prepared plans for the major part thereof.

His supervisors have stated that he would never receive a promotion in his section nor would he receive a promotion until after the supervisors have been advanced. All the other employees were promoted beyond him except one who had received about four grade increases during the employment of your employee in this office, which increases were in proper order and deserving.

The employee has long since been at the top of grade GS-9, although he had formerly held a P-4 in the Conversion Section for a period of four years, and is now on the Civil Service Register as GS-12, as stated before.

Your respondent feels that the removal notice and the allegations contained therein are without foundation of fact and are not substantiated by his employment record.

For the reasons set forth in his answer he respectfully requests that the same be withdrawn. If the Bureau of Ships, Department of Navy, should decide that the herein answer is unsatisfactory then a formal hearing is requested.

Respectfully submitted,

/s/ Andrew J. Easter
Andrew J. Easter

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EXHIBIT 6

LL/Easter, A.J.
12 May 1951

From: Chief, Bureau of Ships
To: Mr. Andrew J. Easter
Subj: Removal
Ref: (a) BuShips ltr of 26 Mar 1951 to A. J. Easter
(b) A. J. Easter ltr of 2 Apr 1951 to Chief, BuShips

1. By reference (a) you were notified of the proposed action to terminate your employment for cause. By reference (b) you replied to the charges contained in reference (a) and requested a hearing. A hearing was granted, a board was appointed by me to hold the hearing and make recommendations to me and hearings were held on 5, 9, 10, 17 and 18 April 1951. I have considered all of the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951.

2. You may continue in an active duty status until that time provided your conduct and performance permit.

3. You have the right to appeal this action to the Under Secretary of the Navy via the Chief, Bureau of Ships within ten (10) days from this date.

H. N. Wallin,
Chief of Bureau

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EXHIBIT 9

28 Nov 1951

My Dear Mr. Easter:

This is in reply to your appeal from removal action taken by the Bureau of Ships and is the final action in connection with your appeal. The entire record in connection with your case has been carefully reviewed and considered. Each of the charges is supported by competent evidence, both documentary and oral, and it is clearly established that the penalty of removal is appropriate. Your appeal, therefore, is denied.

Very truly yours,

Francis P. Whitehair
Under Secretary of the Navy

Mr. Andred Johnson Easter
c/o Wesley E. McDonald
Attorney-at-law
921 Colorado Building
Washington, D. C.
Copy to:
LCDR Rappelt, Rm. 4E 669 Pentagon
OIR 162
Prepared by:
L. Neal Ellis, OIR 105
Rm. 255 Pent. Annex No. 1
Ext. 54083
23 Nov 1951

130 Filed April 18, 1956 Harry M. Hull, Clerk

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OBJECTIONS TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff, by his attorney, Austin Newton, and files objections to the defendant's motion for summary judgment, and moves this Honorable Court to grant summary judgment in behalf of the plaintiff, for the reasons set forth in the memorandum attached hereto, the Exhibits A and B filed herewith, as well as the exhibits filed with defendant's motions.

/s/ Austin Newton
AUSTIN NEWTON
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Motion for Summary Judgment, Exhibits A and B, and Memorandum of Points and Authorities in support thereof, has been made upon defendant by mailing a copy thereof to Kitty Blair Frank, Assistant United States Attorney, U. S. Courthouse, Washington, D. C., this 18 day of April, 1956.

/s/ Austin Newton
AUSTIN NEWTON
Attorney for the Plaintiff

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Filed April 18, 1956 Harry M. Hull, Clerk

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MEMORANDUM OF POINTS AND AUTHORITIES IN OBJECTION TO DEFENDANT'S MOTION FOR SUMMARY JUDGENT, AND IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff's claim for relief sought here is based on an illegal discharge from his Civil Service position and the denial of his appeal, within the agency, said denial being rendered on November 28, 1951.

ARGUMENT

I

Plaintiff's claim is not barred by Laches

Although plaintiff's counsel diligently attempted to secure an answer or other appropriate responsive pleading to the complaint filed in this cause, on March 25, 1952, Civil Action No. 1307-52 (Exhibit A), for unexplained reasons, the government did not file such a pleading until July, 1952, when a motion almost identical to the one now before the Court was filed. That motion was ruled on by this Court on October 15, 1952. While the defendant's present motion would lead the Court to believe that the sum and substance of the action taken by the Court on that motion was to require the plaintiff to file an amended complaint, this was merely incidental to the Court's ruling, which was to deny the defendant's motion, in most emphatic terms (Official transcript on argument on motion, October 15, 1952). More important still is the fact that the answer to plaintiff's complaint (said complaint having been filed on March 25, 1952) was not filed until April 7, 1953. More than one year elapsed between the filing of the complaint and the ans-

wer thereto. Thus it clearly appears that the great portion of time between the illegal discharge and the time of the filing of the present complaint was due entirely to the inactivity of the defendant.

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Another very misleading statement appearing in defendant's motion is found on page 2, and reads:

"It was the Government's motion that the dismissal on the grounds of abatement was granted."

Affidavit of plaintiff's counsel, filed herewith, clearly shows that the Government filed the motion on the suggestion of said counsel when he discovered the failure to substitute parties, and that he told counsel for the Government that he would file no objections so the complaint could be declared abated, and the present action filed. When defendant's motion was granted, plaintiff forthwith filed this complaint. So, while the defendant says in its motion that the plaintiff took no action from the time the first complaint was filed until the filing of the present complaint, it in truth appears that it was the Government who took no action until plaintiff's counsel suggested that the first complaint should be dismissed in order that the present complaint could be filed.

Because of the facts setforth above, and because the doctrine of latches is an equitable doctrine, the defendant's points and authorities on the question of Lashes become totally inoperative. Never was there a more classical case where the maxim,

"He who seeks equity must do equity" and "He who comes into equity must come with clean hands"

demands application. For it is elementary that these doctrines signify that a litigent will not be heard to claim equity where his own conduct has been inequitable. National Fire Insurance Company v. Thompson 281 U.S. 331

The Government is asking the Court to declare the plaintiff guilty of Laches for failure to substitute parties, when for the greater period of that time, the Government had not even filed an answer to the complaint.

It should be particularly noted that the very wording of Rule 25(b) the Federal Rules of Civil Procedure by abating the action on failure to substitute makes it clear that had Congress intended this failure to be the end of the cause of action, then failure to substitute would have been made a barr and not an abatement.

Moreover, the case of Snyder v. Buck 340 U.S. 15 specifically grants the party whose suit has abated the right to start over when there has been a failure to substitute.

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Nor can the defendant claim that the failure to substitute has been detrimental to the Government, because the affidavit of the plaintiff's counsel clearly shows that for the greater part of the period in question, the plaintiff has been employed at a salary greater than that he received as a government employee.

A STATUTORY RIGHT OF THE PLAINTIFF HAS BEEN DENIED

The Government's position taken in defendant's motion, that no such right has been denied, has been passed upon in this Court in this very matter, through Judge Luther Youngdahl. When the Government argued a previous motion almost identical to the one now before the Court, Judge Youngdahl ruled:

". . . it seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being

removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained . . ."

It is vital to note that not only has the Government once submitted the same question to the Court on Mr. Easter's discharge, but their previous motion was supported with substantially the same exhibits, affdavits and authorities and despite the fact that the Court emphatically denied the motion, it is now being submitted again.

The Government's motion on the jurisdictional question began by admitting that the Court does have jurisdiction in cases where the Federal employee was dismissed, contrary to statutory requirements.

As was stated by our Court of Appeals in the case of Powell v. Brannan, 91 U. S. Appeals D. C. 16, judicial relief is available when these statutory procedures have been departed from,

"When there has been a substantial departure from applicable procedures, a misconstruction of government legislation, or like error going to the heart of the administrative determination, a measure of judicial relief may, on occasion be obtainable."

Also see Deak v. Pace 88 U. S. App. D. C. 50.

134 The defendant's theory in this matter can be clearly understood by a reading of Page #4, App. of the Government's motion, beginning with paragraph #6, and continuing through that page. There, the Government poses the question, "What are the procedures required by the act?" Then the question is answered by saying a notice in writing is required, a copy of the charges, and a reasonable time to file a written answer. (Actually, there is more in the actual wording of the statute than these requirements, but for the point being made, these setforth are sufficient.) Then, the Government says that the exhibits show that these things were done. To

state it another way, the Government is saying that if the particular agency goes through this form, the discharged employee cannot under any circumstances have recourse to the Court, or that the statute is one of form, and not of substance, because under this theory, the particular officers concerned could trump up any false charges to discharge an employee, for purely personal reasons, and then follow the form, and say the discharged employee was without judicial relief.

Although such a contention reduces the statute to a fallacy, it is the position the government has taken in this case from the beginning, and the one that Judge Youngdahl stated was not correct in the discharge of this employee.

The most important point in this case is the one which the defendant's motion says is being raised for the first time, but which the record shows was the very contention upon which Judge Youngdahl denied the previous motion for summary judgment, namely, the fact that the Agency, in discharging the plaintiff, merely informed him that he was being removed without telling him which of the many charges against him had been sustained, (See Exhibit #6, defendant's motion), thereby denying him the opportunity to intelligently or fairly prepare for his appeal within the agency procedure. The Government's claim that this was not the case is erroneous. One need only to note the Exhibits filed in the plaintiff's motion and the transcript of the motion argued before Judge Youngdahl to ascertain this fact.

Exhibit #2 shows the many charges that were hurled against the plaintiff. Exhibit #10, Pages 29 through 36, shows the range of penalties for the charges. Penalties vary according to the graveness of the charge, and the number of times the charge has been made. There-
135 fore, it would be impossible to prepare an appeal, and the discharged employee here was forced to file

what purported to be an appeal, but which, for the fact that he did not know what charges had actually been sustained against him, really could amount only to a general prayer for relief to the Under-Secretary of the Navy. This is the reason Judge Youngdahl asked the government counsel the following question when this motion was being argued in Civil Action No. 1307-52:

"• • •THE COURT: Don't you think, as long as the Government provided specific charges, and that after you indicated to him what charges—

MR. STRICKLER: I think it might be advisable, Your Honor, but not required under the statute. I say that by referring to the code itself.

THE COURT: Just on the basis of the code?

MR. STRICKLER: I say it would be advisable.

THE COURT: How does he expect to come into Court and raise a defense on a general statement? He doesn't know what it is. A charge of insubordination requires an entirely different charge than these other charges. It seems to me that as a basis for an adequate hearing the Government should indicate on what basis he is being discharged.

MR. STRICKLER: As I say, if I were giving advice to the agency on which charge, I would say yes, but counsel has stated to the Court that there was a frame-up, and that they had merged all charges to get rid of him. If that is true, Your Honor, this Court has no power, no jurisdiction or authority to inquire into his guilt or innocence.

THE COURT: Unless that should fit into the pattern of arbitrary action, and it should appear in addition that the action was not in accord with the rule, that would be corroborating testimony. • • •"

Furthermore, it is clear that Judge Youngdahl understood that this was not adequate notice within the contemplation of the statute when he said, on page three of the partial transcript:

• • • there would be a serious question in my mind whether this is adequate notice, even in the statement, that might not indicate arbitrary action on the part of the Government. • • •

Finally, the plaintiff submits, not to be repititous, but for point of emphasis, what Judge Youngdahl said in ruling upon the motion of the government on October 15, 1952:

"THE COURT: Will you read that letter for me counsel? What is the nature of that?

MR. STRICKLER: It reads:

136 'By reference (a) you were notified of the proposed action to terminate your employment for cause. By reference (b) you replied to the charges contained in reference (a) and requested a hearing. A hearing was granted, a board was appointed by me to hold the hearing and make recommendations to me and hearings were held on 5, 9, 10, 17 and 18 April, 1951. I have considered all of the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951.'

THE COURT: That is what I had in mind. It seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained. I think under all the circumstances in a case of this nature the Court should not grant summary judgment, but should let it go to trial.

You may draw an Order."

In conclusion the plaintiff respectfully submits that the government's motion was properly denied before, and at that time the Court pointed out where the government had

failed in properly discharging the plaintiff according to law, and for this reason it is urged that the plaintiff's cross-motion for summary judgment should be granted.

Respectfully submitted,

/s/ B. Austin Newton, Jr.
B. Austin Newton, Jr.
Attorney for Plaintiff
1025 Vermont Avenue, N. W.
Washington, D. C.

137 Filed Apr. 18, 1956

AFFIDAVIT

DISTRICT OF COLUMBIA

Comes now the plaintiff, Andrew J. Easter, and under oath deposes and says that on March 26, 1951, he was furnished a letter with five different charges as grounds for his discharge from his Civil Service Position with the Department of Navy. The Affiant says that there was not one scintilla of truth in these charges and that they were made as a subterfuge for the resentment that developed on the part of certain of the plaintiff's superior over an invention.

That although an answer to these charges was promptly filed and further answer was made at an oral hearing, the Chief of the Bureau of Ships without any evidence being offered to support these charges, and without giving one particular of credence or consideration to the answer of the affiant, on May 12, 1951 notified the affiant, "——. I have considered all the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951. ——"

The affiant says that when he received the charges referred to above it was the first action taken against him

under the Navy Civilian Personnel Manuel. He further says that the action taken was unlawful in that the said manuel calls for a different procedure than that which was followed and from that which is required by law.

/s/ ANDREW J. EASTER
ANDREW J. EASTER

Subscribed and sworn to before me this 9 day of April 1956.

/s/ ELIZABETH B. WELCH
Notary Public

138 Filed Apr. 18, 1956

• • • •

AFFIDAVIT

DISTRICT OF COLUMBIA) ss:

Comes now B. Austin Newton, Jr., attorney for plaintiff, and under oath deposes and says that on March 25, 1952, he, with co-counsel, filed an action in this Court entitled Andrew J. Easter v. Dan A. Kimball, Secretary of Navy, Civil Action No. 1307-52; that from March 25, 1952, until July of 1952, the affiant talked to government counsel on many occasions urging them to file an appropriate pleading in answer to the complaint, and since such a pleading was not filed he informed counsel for the defendant that he would, of necessity, file a motion to compel an answer, and such a motion was prepared. On notifying government counsel that such a motion would be filed, and served, he was told that a motion for summary judgment was being prepared and would be filed forthwith. This motion was filed in July, 1952, and came on to be heard on October 15, 1952, at which time the government's motion was denied, but the plaintiff was instructed to file an amended complaint. The amended complaint was filed within the time specified but again

Standard Form No. 81
August 1946
U. S. CIVIL SERVICE COMMISSION

Form approved.
Budget Bureau No. 50-R012.2.

REPORT OF EFFICIENCY RATING

ADMINISTRATIVE-UNOFFICIAL ( )
OFFICIAL:
REGULAR (X) SPECIAL ( )
PROBATIONAL ( )

As of 3-31-50 based on performance during period from 4-1-49 to 3-31-50

EASTER, Andrew J. (Name of employee)

Eng. Nav. Arch. (Title of position, service, and grade)

GS-9

SHIPS (Organization—indicate bureau, division, section, unit, field station)

CODE 444

ON LINES BELOW MARK EMPLOYEE
√ if adequate
− if weak
+ if outstanding

1. Study the instructions in the Rating Official's Guide, C. S. C. Form No. 3822A.
2. Underline the elements which are especially important in the position.
3. Rate only on elements pertinent to the position.
   a. Do not rate on elements in *italics* except for employees in administrative, supervisory, or planning positions.
   b. Rate administrative, supervisory, and planning functions on elements in *italics*.

CHECK ONE:
Administrative, supervisory, or planning ..... ☐
All others ..... ☑

__ (1) Maintenance of equipment, tools, instruments.
___ (2) Mechanical skill.
√ (3) Skill in the application of techniques and procedures.
√ (4) Presentability of work (appropriateness of arrangement and appearance of work).
√ (5) Attention to broad phases of assignments.
+ (6) Attention to pertinent detail.
___ (7) Accuracy of operations.
√ (8) Accuracy of final results.
√ (9) Accuracy of judgments or decisions.
√ (10) Effectiveness in presenting ideas or facts.
√ (11) Industry.
+ (12) Rate of progress on or completion of assignments.
___ (13) Amount of acceptable work produced. (Is mark based on production records? .....) (Yes or no)
___ (14) Ability to organize his work.
√ (15) Effectiveness in meeting and dealing with others.
+ (16) Cooperativeness.
√ (17) Initiative.
√ (18) Resourcefulness.
√ (19) Dependability. (Attendance not considered)
___ (20) Physical fitness for the work.

___ (21) *Effectiveness in planning broad programs.*
___ (22) *Effectiveness in adapting the work program to broader or related programs.*
___ (23) *Effectiveness in devising procedures.*
___ (24) *Effectiveness in laying out work and establishing standards of performance for subordinates.*
___ (25) *Effectiveness in directing, reviewing, and checking the work of subordinates.*
___ (26) *Effectiveness in instructing, training, and developing subordinates in the work.*
___ (27) *Effectiveness in promoting high working morale.*
___ (28) *Effectiveness in determining space, personnel, and equipment needs.*
___ (29) *Effectiveness in setting and obtaining adherence to time limits and deadlines.*
___ (30) *Ability to make decisions.*
___ (31) *Effectiveness in delegating clearly defined authority to act.*

STATE ANY OTHER ELEMENTS CONSIDERED

___ (A) .....
___ (B) .....
___ (C) .....

(1) Maintenance of equipment, tools, instruments.
(2) Mechanical skill.
(3) Skill in the application of techniques and procedures.
(4) Presentability of work (appropriateness of arrangement and appearance of work).
(5) Attention to broad phases of assignments.
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(29) *Effectiveness in setting and obtaining adherence to time limits and deadlines.*
(30) *Ability to make decisions.*
(31) *Effectiveness in delegating clearly defined authority to act.*
STATE ANY OTHER ELEMENTS CONSIDERED
(A) .....
(B) .....
(C) .....

STANDARD Deviations must be explained on reverse side of this form	Adjective Rating
Plus marks on all underlined elements, and check marks or better on all other elements rated	Excellent
Check marks or better on all elements rated, and plus marks on at least half of the underlined elements	Very Good
Check marks or better on a majority of underlined elements, and all weak performance overcompensated by outstanding performance	Good
Check marks or better on a majority of underlined elements, and all weak performance not overcompensated by outstanding performance	Fair
Minus marks on at least half of the underlined elements	Unsatisfactory

Adjective Rating

Rating official .. V.G.

Reviewing official .. VG

Rated by Charles L. Wright Jr. (Signature of rating official) ENGINEER (Title) 12 APRIL, 1950 (Date)

Reviewed by Charles L. Moore (Signature of reviewing official) ENGINEER (Title) 13 APRIL 1950 (Date)

Rating approved by efficiency rating committee 28 MAY 1950 (Date) Report to employee VERY GOOD (Adjective rating)

Rating shown to employee L. L. W. (Initial) 4/13/50 (Date)

U. S. GOVERNMENT PRINTING OFFICE 16—80177-6

UNITED STATES CIVIL SERVICE COMMISSION

NOTICE OF RATING

APPLICANT MUST FILL IN ALL BLANKS DOWN TO HEAVY BLACK LINE

Exact title of examination	Date of examination
Engineer (Naval Architect)	1946

NAME Mr Andrew Johnson Easter

ADDRESS 6420 Belair Road
Baltimore 6, Md.

This is not a notice of appointment. It is a record of your rating. It is important that you keep it.

YOUR RATING IS:

[X] Eligible - Your numerical rating is

P-5 70.0
P-4 76.0

[ ] Your eligibility is suspended pending your furnishing the Commission proof of correction of physical condition, as shown or inclosed notice.

[ ] Ineligible - On written examination

[ ] Ineligible - You do not meet the minimum requirements as specified in the examination announcement

[ ] Ineligible -

If there is a check below, it indicates the amount of veteran preference credit included in your rating.

[ ] 5 points. - If you are appointed you will be required to furnish to the appointing officer evidence of honorable separation from the armed forces.

[ ] 10 points.

IMPORTANT MESSAGE TO ELIGIBLES

1. Your name has been placed on a list of persons who passed this examination. Your chances of being reached for consideration for appointment depend on (a) the number and kinds of positions in Federal agencies that have to be filled from the list, (b) the rating you made in the examination, (c) in some instances, your state of residence, and (d) the number of new eligibles added to the list as a result of privileges given by law to certain veterans to take late examinations. Therefore, no definite information can be given as to an eligible's prospects for appointment.

2. IT IS YOUR RESPONSIBILITY TO KEEP THE COMMISSION INFORMED OF ANY CHANGES IN YOUR ADDRESS OR IN THE CONDITIONS UNDER WHICH YOU WILL ACCEPT APPOINTMENT. SEND ANY NEW INFORMATION CONCERNING YOUR ADDRESS OR AVAILABILITY TO THE OFFICE WHOSE ADDRESS IS SHOWN BELOW AND REFER TO THE TITLE OF THE EXAMINATION AND THE RATING RECEIVED.

3. A competitor who makes a passing mark in a Civil Service examination may, under certain conditions, have his eligibility, and his examination papers, transferred from the register of one civil service office to a similar register in another civil service office. Such a competitor who wishes to have his eligibility transferred should send his request to the civil service office where he has eligibility. A determination will then be made, and the competitor will be notified, as to whether his eligibility can be transferred.

4. If you are certified by the Commission, your qualifications will be carefully considered by the appointing officer in the agency where the position exists. The agency appointing officer is entitled to consider for each appointment the highest three persons on the list of eligibles appropriate for the position to be filled, and may select any one of them to fill the position. If you are selected for appointment you will be notified by the agency.

5. If, when you are considered for appointment, you signify that you are not available or you fail to reply to a communication, your name will be removed from the register until you satisfactorily explain your reasons and specify the conditions under which you would be willing to accept appointment. When you are unable to accept any appointment you should request that your name be suspended from the register until you are again able to accept appointment. A request for the restoration of your name will be considered at any time while the register is still in use.

Issuing Officer and date of issue

If there is a check below, it indicates the amount of veteran preference credit included in your rating.

[ ] 5 points. - If you are appointed you will be required to furnish to the appointing officer evidence of honorable separation from the armed forces.

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CSC Form 4008
March 1947

no answer was filed to the complaint until April 7, 1953, over a year from the date the complaint was originally filed.

That during this long period of time when the case was inactive due to the fact no responsive pleading had been filed to the complaint, counsel inadvertently overlooked the necessity of substituting parties due to a change in the office of the Secretary of Navy.

/s/ B. Austin Newton, Jr.
B. Austin Newton, Jr.

Sworn and subscribed to before me this 18th day of April, 1956.

Harry M. Hull, *Clerk*
/s/ By Jay H. Warren,
Deputy Clerk

139 Filed Apr. 27, 1956

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SUPPLEMENTAL AFFIDAVIT

DISTRICT OF COLUMBIA) ss:

Comes now B. Austin Newton, Jr., attorney for the plaintiff, who under oath deposes and says that under date of April 18, 1956, he executed an affidavit in this cause, and at that time failed to set forth therein certain material statements. In order that these statements will be before the Court in the cross-motion for summary judgment now filed in this cause, he states as follows:

That in the course of time that Civil Action #1307-52 was pending before this Court the affiant discovered that there had been a failure to substitute parties as required by law, and he appeared before government counsel, namely, Mr. Frank Strickler, and called this fact to his attention. That after discussion with government coun-

sel it was agreed that a motion would be filed by such counsel to dismiss the cause, to which there would be no opposition by the plaintiff, in order that in the dismissal of Civil Action #1307-52 on the grounds it had abated, a new action could be filed. The affiant says that this was done.

The affiant further says that to his personal knowledge, since the plaintiff's dismissal from the Navy Department, he has been employed by large firms in the architectural field, and that he has drawn good salaries for such services. The affiant says that because of this the government has not been prejudiced by any failure to substitute parties as required by law since the plaintiff has been receiving remuneration for his services from private employment.

/s/ B. Austin Newton, Jr.
B. Austin Newton, Jr.

140 Sworn and subscribed to before me this 27th day of April, 1956.

Harry M. Hull, *Clerk*
/s/ By Doris C. Meece,
Deputy Clerk

Certificate of Service

A copy of the foregoing supplemental affidavit was served personally on Kitty Blair Frank, Assistant United States Attorney, D.C. Courthouse, Washington, D. C., attorney for the defendant, by leaving a copy of the same at her office address this 27th day of April, 1956.

/s/ B. Austin Newton, Jr.
B. Austin Newton, Jr.

143 Filed June 26, 1956

• • • •

ORDER

Upon consideration of the pleadings, affidavits and record of this Court in Civil Action No. 1307-52, filed herein, defendant's motion for summary judgment to which exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13 have been attached hereto and made a part thereof, and plaintiff's cross-motion for summary judgment, it appearing to the Court that there exists no genuine issue of material fact, that plaintiff's removal was legal and valid, and that plaintiff's claim is barred by laches, and that the defendant is entitled to judgment as a matter of law, it is this 26th day of June, 1956,

ORDERED that defendant's motion for summary judgment be and the same is hereby granted, and it is

FURTHER ORDERED that plaintiff's cross-motion for summary judgment be and the same is hereby denied.

/s/ F. Dickenson Letts
Judge

Certificate of Service

I hereby certify that service of the foregoing Order was made upon plaintiff by mailing a copy thereof to his attorney, Paul L. O'Brien, 729 15th Street, Washington 5, D. C. this 25 day of June, 1956.

/s/ Kitty Blair Frank
Kitty Blair Frank
Assistant United States
Attorney, Attorney for
Defendant

145 Filed July 5, 1956

• • • •

MOTION TO SET ASIDE ORDER AND REINSTATE CAUSE

Now comes the plaintiff, Andrew J. Easter, and moves that this Court set aside the order granting the Defendant's Motion For Summary Judgment entered in this cause June 26, 1956, and to reinstate the case and says for reasons therefor:

1. The plaintiff has been an employee of the Department of the Navy for about fifteen years, in addition to other experience in private ship yards, one year in The Philadelphia Navy Yard, Philadelphia, Pa. as a Grade A draftsman on the conversion of a battle cruiser to an aircraft carrier in 1920, about one year in the Office of the Superintendent Constructor's Office, Philadelphia, Pa., as a Design Draftsman (Ship) in 1928, due to lack of work he was transferred to the Norfolk Navy Yard, Norfolk, Virginia, where he made the arrangement plans for the modernization of a battleship, and upon completion, resigned in 1929. January 16, 1939, the plaintiff was employed by the Bureau of Construction and Repair of the Navy Department War Plans Section, Washington, D. C., to prepare confidential contract plans for the conversion of merchant vessels to naval auxiliaries, etc. During his employment he made advancement and rendered outstanding services by reason of his efficiency ratings and particularly his record in the design
146 and production of plans, including a Beneficial Suggestion submitted about 1940, which was the basic principle for the design and conversion of a tanker to an Auxiliary Aircraft Carrier later known as the Baby Flat Top, by the Navy Department, and the Merchant Aircraft Carriers by the British Admiralty.

2. By virtue of a letter of May 12, 1951, the plaintiff was notified by Chief of Bureau of Ships, Department of Navy, that he would be removed for cause on May 14, 1951, which was appealed.

3. On November 28, 1951, by letter from the Under Secretary of the Navy the plaintiff was notified that his appeal from the Bureau of Ships was denied and that it was his final action in connection with his appeal. Therefore, plaintiff has exhausted his administrative remedies.

4. On March 25, 1952, a Complaint to Hold Unlawful And Set Aside Agency's Action was filed in this Court C. A. No. 1307-52, on October 28, 1952 an order was signed by this Court denying the defendant's Motion For Summary Judgment, March 9, 1954 an Order was entered to dismiss cause by defendant by suggestion of and unopposed by plaintiff, due to the delay of defendant in filing his answer, and to negligence of both parties to substitute party defendant.

5. March 19, 1954 a new Complaint To Hold Unlawful and Set Aside Agency's Action was filed in this Court C. A. No. 1174-54, July 8, 1954 a motion was filed in this Court to Substitute Party Defendant, which was consented to by Frank H. Strickler, Assistant U. S. Attorney.

6. That the plaintiff's attorney, B. Austin Newton, Jr., who represented the plaintiff since 1952 in this cause, withdrew as attorney of record May 4, 1956, by his motion and an order of this Court in contra to the plaintiff's request for the judge to withdraw from the case instead of plaintiff's counsel, whose services were essential, transcripts of proceedings May 4, 1956, The Plaintiff. Your Honor, I am a candidate for United States Senator
147 for the State of Maryland, on the Welfare Program. I am now nearly 60 years old and I look back in life and realize that we are living in a condition today that the people could, if they get together, share

and have an easier life. Therefore I am advocating a lower retirement age for everybody. And I therefore am opposing this and request that the Judge overrule Mr. Newton's withdrawing from my case, because I need Mr. Newton very much. I would like to ask the Judge, with no reflection on the Judge whatsoever, that he withdraw from the case so we could continue on. That is the purpose of my coming here today. I have to be consistant in my campaign procedure.

7. That the Court ordered plaintiff over his objections in above proceedings to secure other counsel and be prepared for trial by June 1, 1956.

8. That plaintiff diligently tried to secure counsel and had contacted about thirteen lawyers without success.

9. That considering the urgency of the matter Mr. W. Edward Plitt a Baltimore attorney appeared before this Court June 1, 1956, and was advised by this Court to appear June 25, 1956 and that the Court would take action on this cause if counsel appeared or not.

10. That the Court did act on the above cause June 25, 1956 on the motion and pleading of the defendant's counsel, relying or her every word regardless of the law, facts, records, etc. in this case and in spite of the statements and pleadings submitted by the plaintiff's counsel, filed April 18, 1956, etc., and the disinterest of the Court to acquaint himself with the law, facts, records, affidavits, etc. in this case.

11. The plaintiff avers that as this cause is a continuation of an earlier civil action, No. 1307-52 filed on March 25, 1952, which action was heard by Judge Luther W. Youngdahl in this Court on October 15, 1952 whereby the Judge stated after considering the exact record in the above cause that The Court:—

It seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled

to be informed as to what specific charges he is being removed under—under all the circumstances in a case of this nature the Court should not grant summary judgment, but should let it go to trial.

and that Order of October 28, 1952 the defendant's Motion for Summary Judgment be and the same is
148 hereby denied, and plaintiff is granted leave to file an Amended Complaint, which was filed November 12, 1952, and in this proceeding on September 27, 1954, par 9 of Defendant's Answer, states—the plaintiff was not furnished with findings of fact—.

12. That the plaintiff was barred by laches can not be substantiated but to the contrary, the plaintiff's counsel filed the above captioned cause March 19, 1954 with the agreement and consent of the defendant's counsel, on July 8, 1954 a Motion To Substitute Party Defendant was also concurred in with defendant's counsel and by Order of this Court. That whenever there was an undue delay it was by the defendant's counsel, who far exceeded the sixty days after service for answering the complaint, and on one instance he took over one year to file.

13. In addition to the Baby Flat Top which was a major success in the wars, on March 5, 1945 Adm. W. F. Halsey wrote the plaintiff—your most interesting plan for a Special Combat Carrier—your interest and efforts are most commendable American gestures——.,

and on November 26, 1947 letters of patent were filed in the U. S. Patent Office, serial no. 788151 for a Combined Merchant and Military Vessel, on December 31, 1952 the plaintiff was invited by the then President-Elect, Dwight D. Eisenhower, through his then and now Assistant, Sherman Adams, to submit his progressive and economical suggestion for a Merchant Naval Vessel, to the Navy Department, after his Administration had taken office, and said:

"At that time it will be possible to give it the thorough study which it appears to deserve."

14. That the plaintiff is entitled to have this case reinstated because: a. Plaintiff's Objections To Defendant's Motion For Summary Judgment filed April 18, 1956, b. plaintiff's exceptional and unrewarded service to the government, i.e. nearly all design or basic plans were devised by him and at least 50% of production of plans as key engineer in a section of 8 men, c. by order of June
149 25, 1956, his Statutory Right has been denied and was inconsistant with substantial justice, facts and legality, d. the contributing negligence of the defendant's counsel in the previous cause, e. plaintiff is entitled to due process of law and a fair hearing, which would produce material facts, legality and more particularly the enormous benefits that would ensue to the welfare of this era.

15. That the plaintiff, although he has been employed during certain periods of employment with earnings as large as those during his employment by the government, through no fault of his own has been put to severe expense, hardship, etc., from May 15, 1951 to the present, in spite of the many commendatory letters from previous employers and that his removal was due to his diligent and conscientious efforts for the interest of this country and was in the way of a foreign born employee's chances for promotion, and that the duties which were performed by him at the Bureau are not now being performed by a bureau employee, because such an employee if any is probably a copyist, similar to the other employees, etc., therefore he does not have the initiative, foresight, vision, experience or productivity that the plaintiff exercised.

16. It is therefore hereby requested that this cause be reinstated, that false and derogatory practices be obliterated, that the Judge disqualify himself, because of his disinterest in acquainting himself with all the records,

etc., in above captioned cause, his age, prejudice, equilibrium, etc., which all make it impossible for him to render proper decisions in the matters before him, all put together with the incompetence, waste, idleness, disgrumbled and dissipating military and civilian personnel are all contributing factors to the cause of the terriffic present national debt and which also violates the principle for which this country stands ready to defend from foreign governments, yet tolerates and protects the persons running the government who are not interested in the country's welfare and do not practice the principles
150 and purposes intended and desired by our forefathers in establishing this country.

Whereupon the premises considered, plaintiff prays this Court to set aside Order and Reinstate cause, and that it is hereby demanded that this action be determined by a Right To Trial By Jury, in support thereof, Rule 38 of the Federal Rules of Civil Procedure.

/s/ Andrew J. Easter
Andrew J. Easter
In Proper Person

Certificate of Service

I hereby certify that service of the foregoing Motion To Set Aside Order And Reinstate Cause of above captioned action has been made upon defendant by leaving a copy thereof in the United States Attorney's Office, at the Court House, Washington, D. C., this 5 day of July, 1956.

/s/ Andrew J. Easter
Andrew J. Easter
In Proper Person

151 Filed Oct. 1, 1956

• • • •

ORDER

Upon consideration of plaintiff's motion to set aside order and reinstate cause, it is this 1st day of October, 1956,

ORDERED that the said motion be and the same is hereby denied.

/s/ F. Dickinson Letts
Judge

Certificate of Service

I hereby certify that service of the foregoing Order was made upon Andrew J. Easter, P.P., 2801 Adams Mill Rd., N.W., Washington, D.C. and upon Paul L. O'Brien, 729 15th Street, Washington, D.C. this 27 day of September, 1956, by mailing copies thereof to them at those addresses.

/s/ Kitty Blair Frank
Kitty Blair Frank
Assistant United States
Attorney

• • • •

43A
5-6 Mrs. Frank contends that we were lax in not filing the present case until March of 1954. And yet in the original case the Government, while not subject to a judgment by default, of course, took about 11 months to file an answer to the original complaint in this case, and now is attempting to use the shield as a sword and say that we are now lax.

THE COURT: She is talking about the time that has elapsed after the dismissal of this case and the bringing of the new one.

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"ADMINISTRATIVE PROCEDURE ACT" Public Law 404 79th Congress Chapter 324—2d Session S.7 AN ACT to improve the administration of

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justice by prescribing fair administrative procedure. 7

Pg. 8—(e) SCOPE OF REVIEW.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

"La Follette-Lloyd Act" of August 24, 1912", Amended by Public Law 623 80th Congress Chapter 447, 2d Session S. 1486 an act to provide for payment of salaries covering periods of separation from the Government service in the case of persons improperly removed from such service. 7, 18

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28 U.S.C. § 1254 (1) 2
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IN THE

Supreme Court of the United States

October Term, 1957

No.

ANDREW J. EASTER, *Petitioner,*

v.

THOMAS S. GATES, JR., Secretary of the Navy,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above case on January 20, 1957, and the order of said Court entered on July 24, 1957, denying a petition for rehearing.

OPINIONS BELOW

The order of the United States District Court for the District of Columbia denying respondent's motion for summary judgment and granting petitioner leave to file an amended complaint was filed on October 28, 1952, C. A. No. 1307-52* (Pet. App. 4A) the suit was abated by consent and dismissed March 9, 1954 (Pet. pet. p. 8). The reinstituting of this case, C.A. No. 1174-54, with the con-

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* Judge Youngdahl: *"I think under all the circumstances in a case of this nature the Court should not grant summary judgment, but should let it go to trial."* (Pet. pet. pg. 22)

sent of counsel, was on March 19, 1954.‡ (Pet. brief app. 2A). The order of Court was filed on June 26, 1956, granting respondent's motion for summary judgment (Pet. App. 6A). The motion to set aside the order and reinstate cause was denied October 1, 1956 (Pet. App. 7A). The Court of Appeals for the District of Columbia Circuit affirmed the District Court on June 20, 1957, (Pet. App. 9A) and the petition for rehearing was denied July 24, 1957 (Pet. App. 10A).

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was made on June 20, 1957, a copy thereof is appended to this petition in the appendix at page 9A. An order denying the petition for rehearing appears in the appendix at page 10A. The jurisdiction of this Court is envoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

I. Was the evidence so one-sided as to justify summary judgment for the respondent, or did there exist any substantial issue of material fact?

II. Was petitioner's removal legal and valid?

III. Did the Court below err in granting the respondent's motion for summary judgment on the respondent's claim that the action was barred by laches?

GENERAL STATEMENT

1. Petitioner has diligently sought redress in this case.* Twice within this period, on March 25, 1952, C.A. No. 1307-52 was filed and dismissed by consent of counsel on March 9, 1954, and a new action was filed within *ten days* on March 19, 1954, C.A. No. 1174-54, also by consent of respondent's counsel.

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‡ Brief (No. 13,631) for Appellant and Joint Appendix in the United States Court of Appeals filed herewith.

* 4 different Secretaries of the Navy, served during these proceedings, which made it necessary for the petitioner to file 2 actions and 2 separate motions to substitute party defendant.

The petitioner has been an employee of the Department of Navy for about fifteen years in addition to other experience in private ship yards including his services in World War I. On December 9, 1920, the petitioner was employed at the Philadelphia Navy Yard as a Grade A draftsman, developing the arrangement plans for a 250 ton craneship and the conversion of a battle cruiser to an aircraft carrier, and resigned on November 11, 1921, due to disarmament. On January 9, 1928, he was appointed as a Design Draftsman, duties of a checker, by the Office of the Superintendent Constructor, Navy Department, Philadelphia, Pennsylvania, where he was transferred on September 11, 1928, to the Norfolk Navy Yard due to lack of work. There he made arrangement plans for the modernization of a battleship and upon completion, resigned April 12, 1929. January 16, 1939, the petitioner was employed by the Bureau of Construction and Repair of the Navy Department, War Plans Section 456, Washington, D.C. as a Chief Engineering Draftsman SP-8, to prepare confidential contract plans for the conversion of merchant vessels to naval auxiliaries, etc. During his employment he made advancement and rendered outstanding services by reason of his efficiency ratings and particularly his record in the design and production of plans (Pet. Brief bottom of p. 15) where uncontested records show he *devised, planned and drew the first or basic plans of most of the naval auxiliaries, and at least 73% of the design work and 50% of the actual production as key engineer in a section of eight men assigned to the same work,* and who originally worked overtime, evenings, Saturdays and Sundays without compensatory pay, and more particularly his beneficial suggestion of a "Merchant Naval Vessel" (Pet. brief p. 14 - 2d para.) which was submitted about June 20, 1940, to the Navy Department and was used as the basic principal for the design and conversion of a tanker to an

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All emphasis supplied unless otherwise indicated.

auxiliary aircraft carrier, later known as the *Baby Flat Top* which is still in operation in the United States Navy, and the adoption of the idea by the British Admiralty for the design and construction of their Merchant Aircraft Carriers used in World War II (see Petitioner's brief page 40A para. 13 and Pet. app. p. 10B, 14B-15B, 17B.

On June 25, 1941, petitioner submitted to the Navy Department for consideration an All Purpose Ship via beneficial suggestion (Pet. app. 17B) and at this time the agency was designated as the Bureau of Ships, Conversion Section 459 and petitioner was promoted to an Associate Engineer (N.A.) P-3, and continued to design and prepared contract plans for naval use until September 24, 1942, when he was promoted to an Engineer (N.A.) P-4, during this period the petitioner was given a good plus or a very good efficiency rating. On May 4, 1945, the petitioner was given a decision by the Efficiency Rating Board of Review, Navy Department as a result of an appeal of a Very Good efficiency rating for 1944, adding element (10) (Presentation of ideas and facts) (Pet. app. 4B).

Robert W. Bruce, the petitioners immediate supervisor had resented the above appeal, thereafter on April 18, 1945, the petitioner's efficiency rating was reduced to an *Unsatisfactory*, on June 15, 1945, Admiral Cochran, the Chief of the Bureau, held up the unsatisfactory rating, and made it possible to appeal such efficiency marks to prevent discharge etc. Breinert B. Madsen, a co-worker, eventually substituted in Bruce's absence, continued the same practice until the office was abolished on March 29, 1946, due to lack of work status. Madsen and the chief and assistant chief were the only foreign born employees in the section. All employees of this section were transferred to other offices throughout the bureau with the same grade and pay except the petitioner, whose time was devoted day and night in devising schemes for plans for

the welfare of the Navy (see petitioner's Schedule of Performances—"Combined Merchant Naval Vessel" and Comments from various agencies (Pet. app. 8B-17B).

The petitioner was reduced in salary and grade, P-3, in spite of his being qualified as a P-5 by the Civil Service Commission (Pet. brief app. 45A) and was transferred, carrying a FAIR efficiency mark from the previous office on April 29, 1946, to the Damage Stability Section 447-M Scientific, where he acquainted himself with the procedures required of the section. While there he discovered that it required the services of two men, Pokodner and Britt, who devoted two months of their time to correct a model plan, due to indecisions, which plan was drawn up before petitioner was assigned to this section. *"He has been chosen for doing all the later models."* (Pet. p. 16, p. 124) and presented a procedure whereby all persons who had a special interest in the model plan could work cooperatively by marking up a preliminary print until they all agreed, thereby eliminating confusion.

On July 26, 1946, petitioner received a GOOD efficiency rating with 4 plus marks, one for element (4) (6) (16) (17), on April 3, 1947, he received a VERY GOOD efficiency rating with 5 plus marks, item (12) being added. March 5, 1948, petitioner was assigned to Code 444A of the same section and thereafter the efficiency rating was GOOD for 1948, due to absence caused by wife's death, and VERY GOOD for 1949-50 (Pet. app. 3B) See brief appendix 16A-67 to 18A *for production and variation of about ten different types of work whereas the four checkers he worked with specialized in only a few types each, also* see Christenson's letter of November 20, 1953 (Pet. app. 2B). *"In my opinion he is an excellent and productive worker."*

On December 7, 1950, the petitioner attended a Forum Meeting 440, together with the Admirals of the Navy Department where he asked questions during question

period, in reference to his combined, interchangeable, multipurpose, Merchant Naval Vessel (Pet. brief bottom of p. 18, and 20A, Line 17) which questions were in line with the subject matter before the forum.

On December 27, 1950, and again January 11, 1951, he was given a * notice he would "receive a performance rating of 'Unsatisfactory' unless your performance is sufficiently improved' (Pet. brief p. 19A, para 3). Thereafter on ** March 26, 1951, petitioner was informed the Bureau was considering termination of his employment for cause, and listed practically every charge in the Navy Civilian Personnel Instructions (Pet. app. 10A, Exhibit 2)

On April 2, 1951, petitioner attempted to answer the various general charges (Pet. app. 12A and Pet. Brief app. 15A) and April 3, 1951, the petitioner received a letter rejecting the answer and setting a date for hearing on April 5, 1951. (Pet. app. 13A). A hearing was held on April 5, 9, 10, 17 and 18, 1951, see transcript of hearing,

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* Without a prior "warning" as required by the Navy Civilian Personnel Instructions, NCPI:5-1 as follows:

> NCPI:5-1. THE WARNING.—The performance rating of 1950 provides that no employee shall be rated unsatisfactory without a ninety-day prior warning and a reasonable opportunity to demonstrate satisfactory performance. The regulations of the Civil Service Commission prohibit the rating of performance as deficient with regard to any work requirement that was not known by the employee or which the employee had not been given a fair opportunity to meet. Before giving a warning for unsatisfactory work performance, an examination should be made to determine the cause of the unsatisfactory performance, and corrective action taken, whenever possible. Should corrective action fail to improve performance sufficiently or should the taking of corrective action be impractical, the immediate or higher supervisor will give the employee the warning, in writing. (Pet. brief App. 19A)

** "*So grossly erroneous as . . . to imply bad faith, . . . not supported by substantial evidence.*" 41 U.S.C.A. § 321 Atlantic Carriers v. U.S., 131 F. Supp. 1.

exhibit 13 of the original record in these proceedings. A letter dated May 12, 1951 (Pet. app. 14A) he received after the close of work on [illegible]14, 1951, the date of termination of the petitioner's [illegible]ment. On May 18, 1951 (Pet. app. 15A) he filed a [illegible]o the Under-Secretary of Navy which was denied [illegible]ember 28, 1951, (Pet. app. p. 16A) which was the [illegible]lministrative action.

STATEMENT OF FACTS

On March 25, 1952, the petitioner, Andrew J. Easter, having exhausted his administrative remedies, (Pet. app. 16A) filed a complaint in the United States District Court for the District of Columbia asking that the Navy Department's action in separating him from the service be held unlawful and that such action be set aside. This action was entitled Andrew J. Easter v. Dan A. Kimball, Secretary of the Navy, Civil Action No. 1307-52. For many months there followed a concerted action on the part of the petitioner to compel the respondent to answer the complaint, notwithstanding the fact that the applicable statute allows the United States Government only sixty days to respond to such a pleading. This is fully explained in the affidavit of petitioner's counsel which was not controverted. (See Pet. brief, App. p. 33A)

On July 7, 1952 Respondent filed a motion for Summary Judgment (almost identical to the one filed in Civil Action No. 1174-54), in Civil Action No. 1307-52. *The motion was denied* (Pet. app. 4A), but the petitioner was granted leave to file an amended complaint seeking his relief under and/or substitute statute, the "Administrative Procedure Act", June 11, 1946 and the "La Follette-Lloyd Act" as amended on June 10, 1948. The amended complaint was filed promptly in Civil Action No. 1307-52, but notwithstanding this fact the Government still would not file an answer to the complaint even after its motion for Summary Judgment had been denied and after the

Court had indicated that the petitioner was in all likelihood entitled to the relief he was seeking (See Pet. p. 21) (partial transcript of Civil Action No. 1307-52), and not until April 7, 1953, was an answer ever filed by the respondent to the original complaint or amended complaint, over a year after the original complaint was filed.

On January 19, 1953, three months before the Government had ever filed an answer to the original complaint, the respondent, Dan A. Kimball resigned as the Secretary of the Navy, and on February 4, 1953, he was succeeded by Robert B. Anderson. During this period of time the petitioner, in his attempt to secure the necessary responsive pleading from the Government to his suit was distracted from the requirement under the Federal Rules of Civil Procedure to substitute a party defendant within a six month period. (See Pet. brief, App. p. 34A) Realizing that the Federal Rules of Civil Procedure require the abatement of an action on the failure to substitute within six months a party defendant, the petitioner consulted the Government about a voluntary dismissal of Civil Action No. 1307-52 with the understanding that a new action would be filed against the then Secretary of Navy, Robert B. Anderson. This was agreed upon, and the Government's Motion to Dismiss, which had been filed at the suggestion of the petitioner, was consented to, the order of dismissal was signed on March 9, 1954 and the new suit, Civil Action No. 1174-54, was filed on March 19, 1954, (Pet. brief, App. 2A, 34A): *ten days after the original suit was dismissed.* (See Pet. Brief-App. p. 43A, 5-6 also see respondent's brief in lower court p. 10 line 10): *"Plaintiff's initial suit . . . as here, was dismissed by consent"*. The Government did not answer this complaint until September 27, 1954. (Pet. brief, App. p. 9A)

On May 2, 1954, the respondent, Robert B. Anderson, left the office of Secretary of the Navy, and on May 3,

1954, the former respondent, Charles S. Thomas, became the Secretary of the Navy. A motion to substitute party defendants was timely filed (See Pet. brief, App. p. 7A); and the order substituting the party defendant was signed July 8, 1954, *said order being consented to by the Government* (See Pet. App. 5A). There was no other activity in the action until after the matter had been pre-tried at which time the Government again filed a Motion for Summary Judgment on the grounds previously submitted in Civil Action No. 1307-52 and on the additional ground that the petitioner was guilty of laches. (Pet. brief, App. p. 12A)

This matter came on to be argued on the respondent's Motion for Summary Judgment on June 26, 1956, together with the petitioner's Opposition filed thereto as well as the petitioner's Cross-Motion for Summary Judgment. In the first instance the respondent said that the petitioner's claim was barred by laches. In support of this claim the government submitted that the first complaint filed by the petitioner abated when he failed to substitute the party defendant when the respondent, Dan A. Kimball, was succeeded in the office of Secretary of the Navy by Robert B. Anderson. The Government then made the misleading statement that the previous action, Civil Action No. 1307-52, had been dismissed by this present action, when in fact it was the petitioner who had asked the respondent to take that action. (See supplemental affidavit of plaintiff's attorney, Pet. brief, App. p. 34A)

The Court had before it on the hearing of this motion in consideration of this contention the affidavit of the petitioner (Pet. brief, App. p. 32A), the affidavit of the petitioner's attorney (Pet. brief, App. p. 33A) and the supplemental affidavit of the petitioner's attorney, (Pet. brief, App. p. 34A).

The Government, on its second point that no statutory right of the petitioner had been denied, relied on the affidavit of George A. Holderness which was Exhibit #1 of the respondent's motion, (This affidavit submitted evidence of certain procedures which had been used in terminating the petitioner, including the letter of March 26, 1951, Exhibit #2 (Pet. app. 10A which set out an array of charges against the petitioner) the answer of the petitioner by letter of April 2, 1951 (Pet. app. 12A) to these charges which was Exhibit #3 & #4 (Pet. brief app. 15A) the notice setting a date for a hearing by letter of April 3, 1951, (Pet. app. 13A) Exhibit #5, the notice of action after the hearing by letter of May 12, 1951, (Pet. app. 14A) which was Exhibit #6, a letter replying to the petitioner's appeal, Exhibit #7 (Pet. app. 15A) a letter dated November 28, 1951 (Pet. app. 16A) Exhibit #9, and a set of the Navy Civilian Personnel Instructions, all being a part of the respondent's Motion for Summary Judgment.

In opposition to this contention the petitioner showed that there had been a statutory denial in a letter mailed to him by the Navy Department dated May 12, 1951, Exhibit #6 (Pet. app. 14A), in that this communication merely stated that after consideration of his answer and after the hearing the Chief of the Bureau of Ships, N. H. Wallin, had "considered all of the facts presented in your case and hereby notify you that you will be removed for cause effective close business 14 May, 1951." Petitioner contended that this notice denied him every right to present an appeal that could be fairly objective and effective for the reason that the notice had failed to say what charges had been sustained as it was *definitely known that only an insignificant charge of tardiness was sustained and no evidence* was offered on some charges, but to the contrary the testimony of the Navy Department's own witnesses definitely contradicted any grounds to support the charges. This made all the difference because most of the charges would not permit a dismissal under the Navy Department Regulations.

REASONS FOR GRANTING THE WRIT

I

Material Issues of Fact Presented By the Petitioner Were Not Considered

A. The court should not direct a verdict unless the evidence upon any issue is all on one side, or so overwhelmingly on one side as to leave no room for doubt about what the fact is. (See *Roth* v. *Swanson*, 145 F. 2d 262). TELLEZ v. CANTON RAILROAD, Md. Daily Record, May 20, 1957

"The function of the summary judgment procedure is not to try the case or to decide issues of fact. It is merely to determine whether there is an issue of fact to be tried and if there is none, to cause judgment to be rendered accordingly • • • •"

"If there is any issue of fact un-disposed of and remaining to be determined by the trier of the facts upon the weight of the evidence, summary judgment cannot be granted."

1. One issue is whether, in view of all the evidence, the action of the hearing officer was not a legally arbitrary or capricious one and that the action taken was on *trivia* at best. It is respectfully submitted that this action is to be so characterized and for the following reasons:

a. First attention is directed with emphasis to the petitioner's Report of Efficiency Rating as of March 31, 1950 (Pet. App. 3B) this report is well supported by the evidence in the record filed in the case below and notice of decision of the Efficiency Rating Board (Pet. app. 4B & 14B) and the following partial questions to and answers from supervisors and employees, taken from the transcript of the Removal Hearing, identified in the original record as exhibit #13 together with the necessary copies of brief No. 13,631 being filed herewith.

B. It is respectfully submitted that no evidence is presented in the record to either dispute or refute the above referred to evidence of the petitioner's fellow workmen who were the agencies own witnesses, most of whom were his immediate co-workers, and the chief of the section, Mr. Moore and Mr. Lively, the project engineer. Charles L. Wright, assistant to Mr. Moore, testified that he was responsible for the * charges being preferred against the petitioner. The following is part of Wright's testimony on April 9, 1951, in reference to unsatisfactory performance:

p. 19—we are having difficulty in filling our vacancies.

p. 25—I don't know for a fact. They could have taken as long as three months?—I don't know for a fact. (cf. Pokodner and Britt, who devoted two months of their time to correct a model plan, which was made by someone other than petition (Pet. p. 5).

p. 29—As I have no standards to judge against, I would have to give an opinion.

p. 31—Some of them are higher grades than he is,

p. 34-35—Do you have any of his work that shows those errors? I don't go over his work until it is correct. (See exhibit 13 for petitioner's work in rear of Transcript of Testimony marked 7).

p. 38—*The people who worked with him have told me they kept him continually informed that he wasn't capable of doing the work.* cf. demoralizing office: See (Pet. App. 14-17B) Schedule of performances and index of cases, (Pet. brief, App. 17A) also Easter's testimony, 18 April 1951, p. 1-131 of the original record on file in this proceeding.

p. 42—*We can't get people.*

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* Captain Took, the officer in charge of the entire design section, and Wright's superior, said to petitioner "It was a personal matter and not to worry about it . . . " Petitioner Note Dec/27/50—Diary.

p. 43—I beg your pardon • • • he worked through the whole job to the checking point. (cf. had to have someone to help him).

See (Pet. brief p. 15, Line 14) Petitioner's supervisor, Charles L. Wright stated "Andy you are an asset to this institution, I and the section will assist you in what you are doing."

Reference Insubordination:

p. 59—Words that they have used here as supervisors I had used as relating to the checkers who had worked with the man.

p. 69—Do you know of your own knowledge? No.

p. 70—for these opinions.

p. 71—I had considered his work was satisfactory up until September (cf. ref. June) I didn't get back • • • of the matter until • December. cf. from photostadt of Diary of Petitioner for 1950, next to last page of exhibit no. 13. Reference Wright's testimony as to time element of three months whereas only two months were required, not including annual leave on July 14, and August 1 and sick leave on August 23-25. Following from Diary 6/14-8/30:

June 14 DD927 Model Plan (ink) model 1/24 size of ship 3/16″-1″ of model drawing 3/16 size of model 3/32″=1′ of ship. June 29-30, CV9 model test #0, 1 draft corrected for damage to main dk (from sheet 30 A) checked curves of stability and corrected drafts for test 2c, 3c, 4c,

July 11 continued DD927 model

August 23 finished DD927 model 024906, checked and approved 9/29

• Petitioner overheard Comdr. Ramsey tell Wright about December 10, 1950, that "if you don't have anything on him (Easter) frame him." Petitioner note DC/17/50—Diary.

August 30 corrected to suit Sam

p. 79—No, I don't think he did refuse to correct them. (cf. see petitioner's diary next last page of exhibit 13 ("Aug. 30, corrected to suit Sam").

p. 118—In five years, he hasn't had a promotion? That's right.

p. 119—Do efficiency ratings reflect the caliber of work of an employee? Yes. (cf. petitioner's mark was VERY GOOD). (Pet. app. 3B)

10 April 1951

Questions to Mr. Moore and Answers, Wright's superior.

p. 44—has Easter ever been disrespectful to you? No, he hasn't.

p. 51—did anyone ever come to you and tell you that he was annoying them? I don't recall that anybody ever did.

p. 60—You have a man in your section named Christenson? That's right. What type of worker is he? Well, he's a conscientious sort of fellow.

p. 61—You have a good opinion of him as a man? Oh, yes.

See Christenson's letter of November 20, 1953, (Pet. App. 2B):

"I have worked together with Andrew J. Easter for several years, from about 1945 to his dismissal from the Bureau of Ships. In my opinion he is an *excellent and productive worker.*

Mr. Easter has strong individual views with respect to truth and justice as he sees it."

17 April 1951

Questions to Mr. Lively, the project engineer, and answers. Moore and Wright's superior.

p. 36—Do you have a surplus of engineer employees? There is a scarcity. Very scarce? Yes.

17 April 1951

Questions to Mr. Shapiro & answers,

pg. 38—I have never noticed that he was disrespectful. p. 43—were these changes made willingly? Oh, yes. p. 47—was particularly argumentative or troublesome — ? No, sir. p. 55—ever made a nuisance of himself to you? No, sir. p. 57—any of these discussions as insubordinate on his part? No, sir.

Questions to Mr. Christensen and answers,

p. 80—Easter do things—as a nuisance — ? No.

p. 82—affected your morale? No, sir.

p. 83—affected morale of others — ? No, sir.
——found an abnormal number of errors? No, sir.

p. 84—overall appraisal of—work—? He has done a number of jobs with not much assistance.

—caliber of work—? I would say, good.

p. 92—does that appear like a good job (DD 927) to you? Yes, sir. It looks like a very nice job. p. 95 Is that good work (CVA-58)? p. 96—that was perfect.

p. 97—Is that a good piece of drafting work, (Monograph)? This looks fine to me. p. 101 impress you as being a good piece of work (CVE-105-127)? Yes, That is eminently a good piece of work. p. 103—ever refused to make any corrections — ? No, sir. p. 104. types of work. p. 106 Is he capable of making these calculations? has

done all of those that I said. p. 108 Easter's work is very, very good——. p. 109 When we come to the calculations, — he nevertheless has done it, again and again. — said to his praise, ——, has applied himself and now makes calculations? Oh, yes. p. 110. He had done all these calculations. p. 113 Have had arguments with him? Never. p. 116—did . . some . . elaborate calculations — ? That is right. p. 118 Yes, sir, I can say it is good. I will not therefore say that he canont make a mistake. p. 121 In general, he does all types of work. p. 122—can do this job better than any of us ——.

p. 124 He has been chosen for doing all the later models. p. 131 At times very interested, very interested. p. 137 has gotten along very well with all of us up there.

18 April 1951

Easter p. 1-131—did all types of work—integrations—classified work and purpose—gave up vacation—known as pump handle—work horse—DD 927—exceptional work —no assistance—Le Roy lettered—drawn to exact scale—directive directing 3/40 inch=1 ft.—which had to be converted on a calculating machine to a workable scale in every incident. — did all the different types of work—(PET. BRIEF, app. p. 17A) including calculations—and drafting for 4 different checkers—who specialized—and handed work to me—piecemeal and at various stages.

The Chief of the Bureau of Ships, the supervisors and others were being promoted, some with commendations, on the ingenious efforts (the Baby Flat Top of the Navy) and production of the Petitioner, who was at the same time being intrigued against and beaten down, and is still being discredited throughout these proceedings. (Pet. Brief p. 18 para. 4), (Pet. app. 15B, 17B)

It is alleged that the arbitrary firing of Petitioner was prompted by his asking Questions at 440 forum Dec. 7, 1950 reference his combined, interchangeable, multipurpose Merchant Naval vessel (Pet. brief p. 18, para. 5, & 20A Line 17) and his diligence for submitting same for adoption. (Pet. Schedule of Performance and Index of Cases p. 17B)

II

A Statutory Right of the Petitioner Was Denied In Separating Him From His Position With The Navy Department

1. *Whether Petitioner's Removal Was Legal and Valid*

A. The Court erred in granting the respondent's Motion for Summary Judgment in granting it on the grounds that the petitioner had not been denied any statutory right, the petitioner having been denied a statutory right in that the removal was arbitrary.

The petitioner was denied a statutory right for the reason that after being presented with a long array of charges which under its own Navy Civilian Personnel Instructions were in almost every instance only grounds for some minor sanction on the first alleged violation (as was the case here), the petitioner was then merely notified with a blanket statement that the charges had been sustained and he was being removed. On many of these points no evidence whatsoever had been presented, so it must necessarily be concluded that only certain minor charges could have been sustained, and without knowing which charges these might be it was absolutely impossible for the petitioner to present an effective appeal.

The Government's position that no such right was ever denied was passed upon by the United States District

Court for the District of Columbia *in this very matter* through Judge Luther Youngdahl. This took place when the Government argued a previous motion almost identical to the one which was granted in this cause in the first action filed by the petitioner, Civil Action No. 1307-52, see transcript of proceedings of October 15, 1952. When that motion for Summary Judgment was argued Judge Youngdahl ruled:

> " • • • it seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained • • • ."

It is vital to note that not only has the Government once submitted the same question to the Court on Petitioner's discharge, but their previous motion was supported with substantially the same exhibits, affidavits and authorities and despite the fact the Court emphatically denied the motion, it was submitted again.

The Government's position on the jurisdictional question as stated in the Motion to Dismiss admitted that the Court does have jurisdiction in cases where the Federal employee was dismissed contrary to the statutory requirements of Title 5, Section 652, LLOYD-LaFOLLETT Act. As was stated in the case of *Powell* v. *Branman, 91 U.S. App.D.C. 16*, judicial relief is available when those statutory procedures have been departed from,

> "When there has been a substantial departure from applicable procedures, a misconstruction of government legislation, or like error going to the heart of the administrative determination, a measure of judicial relief may on occasion be obtainable."

The same principal is announced in BLACKMAR vs. UNITED STATES, 128 C. Cls. 693, 120 F Supp. 408

"Plaintiff's discharge was based, in part, on charges which were not set out 'specifically and in detail' (which made it impossible for plaintiff to conduct his defense)" See Stringer vs. U.S., 90 F. supp. 375, 117 Ct. C.1, 30; Witlner vs. U. S., Supra.

DEAK vs. PACE, 88 U. S. App. D. C. 50, 185 F.2d 997.

"What might constitute full information in re case might be irrevelant to circumstances to other cases."

MULLIGAN vs. ANDREWS 93 U.S. App. D. C. 375, 211 F.2d 28

"Must state the 'reasons' for removal.--only findings upon such charges specifically identified, can constitute the 'reasons' required"

The respondent's theory in this matter can be clearly understood by a reading of page 4 of the Government's motion beginning with paragraph #6 and continuing through that page. There, the Government poses the question, "What are the procedures required by the act?" Then the question is answered by saying a notice in writing is required, a copy of the charges, and a reasonable time to file a written answer. (Actually, there is more in the actual wording of the statute than these requirements, but for the point being made, these set forth are sufficient.) Then, the Government says that the exhibits show that these things were done. **To state it another way, the Government is saying that if the particular agency goes through this form, the discharged employee cannot, under any circumstance have recourse to the Court**, or that the statute is one of form, and not of substance, because under this theory the particular officers concerned could trump up any false charges to discharge an employee, for purely personal reasons, and then follow the form, and say the discharged employee was without judicial relief. BORAK vs. BIDDLE 78 U. S. App. D. C. 374, 141 F.2d 278

"Intent of Congress to assure permancy of tenure—would come to nothing, or else depend upon the whim of the officer in charge"

Although such a contention reduces the statutes to a nulitity it is the position the Government has taken in this matter from the very beginning, even in the first action before it was abated, the one that Judge Youngdahl stated was not correct in the discharge of this employee or any employee who comes within the provision of the statute.

The most important point in this matter is one which the repondent claimed in the Court below was being raised for the first time, but which the transcript of the hearing before Judge Youngdahl conclusively shows was the very contention upon which a previous motion for Summary Judgment in the first action was denied, namely the fact that the agency in discharging the petitioner merely informed him that he was being removed without telling him which of the many charges against him had been sustained. The letter from the Navy Department dated March 26, 1951 (Petitioner's app. 10A) shows the many charges which were hurled against the petitioner. The Navy Civilian Personnel Instructions pages 29-36 show the range of the penalties for the charges. Penalties vary according to the graveness of the charge and the number of times the offense has been committed. Therefore, it would be impossible to prepare an appeal; but the discharged employee here was forced to file what purported to be an appeal but which for the fact he did not know which charges had been actually sustained against him really could amount only to a general prayer for relief to the Secretary of the Navy. In paragraph 9 of the respondent's answer filed April 7, 1953 and the answer to the complaint in this suit, filed September 27, 1954, (Pet. brief app. p. 10A, para. 9) respondent admits, and in fact stated, *"that petitioner was not furnished with*

findings of fact." This is the reason Judge Youngdahl asked the government counsel the following question when this motion was being argued in *Civil Action No. 1307-52:* (See official transcript of proceedings dated October 15, 1952)

> " • • • THE COURT: Don't you think, as long as the Government provided specific charges, and that after that you indicated to him what charges—
> MR. STRICKLER: I think it might be advisable, Your Honor, but not required under the statute. I say that by referring to the code itself.
> THE COURT: Just on the basis of the code?
> MR. STRICKLER: I say it would be advisable.
> THE COURT: How does he expect to come into Court and raise a defense on a general statement? He doesn't know what it is. A charge of insubordination requires an entirely different charge than these other charges. It seems to me that as a basis for an adequate hearing the Government should indicate on what basis he is being discharged.
> MR. STRICKLER: As I say, if I were giving advice to the agency on which charge, I would say yes, **but counsel has stated to the Court that there was a frame-up, and they had merged all charges to get rid of him. If that is true, Your Honor, this Court has no power, no jurisdiction or authority to inquire into his guilt or innocence.**
> THE COURT: Unless that should fit into the pattern of arbitrary action, and it should appear in addition that the action was not in accord with the rule, that would be corroborating testimony."

Furthermore, it is clear that Judge Youngdahl understood that this was not adequate notice within the contemplation of the statute when he said, on page three of the partial transcript:

> " • • • there would be a serious question in my mind whether this is adequate notice, even in the statement, that might not indicate arbitrary action on the part of the Government • • •"

Finally, the petitioner submits, for point of emphasis, what Judge Youngdahl said in ruling upon the motion on October 15, 1952:

> "THE COURT: Will you read that letter for me counsel? What is the nature of that?
>
> MR. STRICKLER: It reads:
>
> > 'By reference (a) you were notified of the proposed action to terminate your employment for cause. By reference (b) you replied to the charges contained in reference (a) and requested a hearing. A hearing was granted, a board was appointed by me to hold the hearing and make recommendations to me and hearings were held on 5, 9, 10, 17 and 18 April, 1951. I have considered all the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951.'
>
> THE COURT: That is what I had in mind. It seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained. I think under all the circumstances *in a case of this nature the Court should not grant summary judgment, but should let it go to trial.*
> You may draw an Order."

The petitioner respectfully submits that the Government's motion was properly denied when it was first argued before Judge Youngdahl and that at that time the Court pointed out where the Government had failed in properly discharging the petitioner according to law. For the same reason the petitioner now urges this Court that the respondent's motion for Summary Judgment in this case should have been denied.

III

The Petitioner's Claim Was Not Barred By Laches

The petitioner was not guilty of any delay or action that could be deemed to be laches. The lapse of time from the date of the exhaustion of his administrative remedies until the time that the present suit was filed was consumed almost entirely by the respondent's failure to file the responsive pleadings as required by law. That the failure to substitute parties was merely cause for abatement and did not bar the present action, and the statute so states. That the failure to substitute party defendants was caused by the respondent's own negligence in not filing the required responsive pleadings and thereby distracting the petitioner's attention from the necessity of substituting the party defendant.

The Court erred in granting the respondent's Motion for Summary Judgment in granting it on the Government's claim that the action was barred by laches, the petitioner not having been guilty of delay in the entire proceedings either administratively or judicial, and all delay having been the result of the *Government's negligence or willful refusal* to lawfully respond to the pleadings filed by the Petitioner, which delay was the contributing factor in that the *second Secretary of the Navy* was not substituted for the original party-defendant.

Although petitioner's counsel diligently attempted to secure an answer or other appropriate responsive pleadings to the complaint filed in this cause on March 25, 1952, Civil Action No. 1307-52, for unexplained reasons the government did not file such a pleading until July 7, 1952, when a motion almost identical to the instant case was filed. That the motion was ruled on by this Court on October 15, 1952. *See Transcript Easter* v. *Kimball 1307-52.* While the respondent's Motion for Summary Judgment, which the District Court granted dismissing

this action, would lead one to believe that the sum and substance of the action taken by the Court on the original Motion to Dismiss the first action filed, was to require the petitioner to file an amended complaint, this was merely incidental to the Court's ruling which was to deny the respondent's motion in most emphatic terms. (See Order of Court, Pet. app. 4A and Official Transcript of Proceedings in Civil Action No. 1307-52, Pet. pet. p. 18). More important still is the fact that the answer to the petitioner's complaint was not filed until April 7, 1953, although the complaint was filed March 25, 1952; more than one year had elapsed between the filing of the complaint in the first suit and the answer thereto. Thus it clearly shows that the great portion of time between the time of the exhaustion of the petitioner's administrative remedies on the illegal discharge and the time of the filing of the present complaint was due entirely to the inactivity of the respondent. As was stated in the petitioner's opposition to the respondent's motion for Summary Judgment: (See Pet. brief, app. p. 25A-26A).

> "Another misleading statement appearing in respondent's motion is found on page 2 and reads:
>
> > 'It was the Government's motion that the dismissal on the grounds of abatement was granted.'"

The affidavit of petitioner's counsel (Pet. brief, app. p. 33A) clearly shows that the Government filed the motion to dismiss at the suggestion of said counsel when he discovered the failure to substitute the party defendant, **and he told counsel for the Government he would file no objections so the complaint could be declared abated and the present action filed.** With the petitioner's consent to the dismissal of the first action, Civil Action 1307-52, the same was dismissed on March 9, 1954 and on March 19, 1954, *ten days later*, the present complaint was filed;

however, the answer thereto was not filed until September 27, 1954. (Pet. Brief App. p. 2A, 9A)

So, while the respondent claimed in their motion on which the Court dismissed this action that the petitioner took no action from the time that the first complaint was filed until the filing of the complaint in this action which is now on appeal, see transcript Easter v. Thomas, 1174-54 (Pet. brief, app. p. 43A, 5-6); in truth it was the Government which took no action until the petitioner's counsel requested that Civil Action No. 1307-52 be dismissed in order that the complaint in this case could be filed.

Because of the facts set forth above, and because the doctrine of laches is an equitable doctrine, the respondent's points and authorities on the question of laches become totally inoperative. Never was there a more classical case where the maxim,

> "He who seeks equity must do equity" and "He who comes into equity must come with clean hands"

demands application. For it is elementary that these doctrines signify that a litigant will not be heard to claim equity where his own conduct has been inequitable. *National Fire Insurance Company* v. *Thompson 281 U.S. 331.*

The court below in granting the respondent's motion was declaring the petitioner guilty of laches for failure to substitute a party defendant, when for the greater period of that time the Government had not even filed an answer to the complaint. It should be noted that the very wording of Rule 25d Federal Rules of Civil Procedure in stating that the action abated on failure to substitute within six months makes it extremely clear that had Congress intended this failure to be the end of the cause of action then it would have provided in this rule that the failure to substitute would be a bar to the action and not to an abatement. (Rule 25d, Federal Rules of Civil Pro-

cedure) Moreover, the case of *Snyder* v. *Buck*, 340 U.S. 15, specifically grants the party whose suit has abated the right to start over when there has been failure to substitute. *The question of whether laches is present after a person has started over would in all cases depend on the circumstances and facts surrounding each case.* Had the Supreme Court felt that failure to substitute within a six month period was in and of itself a bar to another action, it certainly would have so stated instead of saying exactly to the contrary that a new action could be brought. *"Petitioner loses her judgment and must start over," lapse of time was not shown to have harmed the Government or proven by the respondent.* cf. *Engineers very scarce* (Pet. p.15 p.30).

GARDNER vs. PANAMA RAILROAD CO. 341 U. S. 934, 185 F.2d 730

(a) *"It should not be determined merely by a reference to and a mechanical application of the statute of limitation, the equities of the parties must also be considered,* p. 30-31.

(b) *Where there has been no inexcusable delay in seeking a remedy and where no prejudice to the defendant has ensued from mere passage of time, relief should not be denied on the ground of laches.* p. 31.

"There is no showing that respondent's position has suffered."

PELTIER vs. SEATON U. S. Court of App. D. C. No. 13370-57

"On the ground of laches, the District Court rendered summary judgment for the defendants. In all the circumstances we are unable to agree that the appellant was guilty of laches. We think the amended complaint and the answer, and the conflicting affidavits raise issues which should be resolved.

Also see respondent's brief in court below, bottom of page 10, *"on the other hand, if the plaintiff had substituted party defendant within the time allowed—, he would not have been met with the plea of laches despite any Government delay."*

Nor, could the respondent claim that failure to substitute had been detrimental to the Government because the affidavit of the petitioner's counsel (Pet. brief, app. p. 35A) clearly shows that for the greater part of the period in question the petitioner was employed at a salary greater then that he had received as a government employee, and that time was not detrimental to the government except for the loss by the government of the services of the petitioner who was rated a P-5 in 1946 (Pet. brief, app. 45A) yet was doing meritorious services beyond his rank and duties for a P-3 [Trans. p. 122), Transcript of Removal Hearing 17 April 1951]

> "Easter can do this job better than any of us, because he knows ships. He knows drafting. This *combination is rare,* in my opinion, *in the stability section.*"

See (Pet. pet. p. 12) p. 19 "We are having difficulty filling our vacancies", p. 42—"We can't get people" (Pet. pet. p. 15, p. 36) Do you have a surplus of engineer employees? There is a scarcity. Very scarce? Yes.

(A) Procedure is better presented by the Schedule of Performances and Index of Cases (Pet. app. 1A)

(B) It is definitely clear that the course (Schedule of Performances and Index of Cases) will emphasize the mistake Judge Letts made when he granted summary judgment to the respondent as to laches, as to the time element, the time lapsing between the dismissal of the one suit C.A. No. 1307-52 and the filing of the instant suit C.A. No. 1174-54, it was a matter of only *ten days* and both with the consent and cooperation of respondent's

counsel. See Petitioner's brief 43A, 5-6. The Court: "*She is talking about the time that has elapsed after the dismissal of this case and the bringing of a new one.*" Also see Transcript of Proceedings dated June 25, 1956.

(C) The consent of respondent's counsel was further substantiated when the *third Secretary was made Party Defendant* July 8, 1954, (Pet. app. 5A) and again on April 26, 1957, the *fourth Secretary was substituted by consent* (Pet. app. 8A) by declaring *that there was a substantial need for continuing and maintaining this action.* Altho the Government is actually the client of the Solicitor General . . . When the personnel actions of Breinert B. Madsen and Charles L. Wright against the petitioner are weighted against Wright's and the other's testimony it is obvious that, all was of a personal matter (Pet. pet., bottom of pg. 12) devised to further their advancement or was by direction, (Pet. pet., bottom pg. 13) as they now hold high positions in the Navy Department, yet neither has the integrity, background (see Pet. app. 10B, 15B, 17B-19B, initiative, foresight or experience of the petitioner.

The present administrative and Judicial procedures and/or appeals are not corrective or effective, that is why this case is here now.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

GEO. WASHINGTON WILLIAMS,
Attorney for Petitioner
231 St. Paul Place,
Baltimore 2, Maryland.

ANDREW J. EASTER,
In Proper Person
2801 Adams Mill Road, N. W.,
Washington 9, D. C., Apt. 108,
On the Petitioner, Petitioner.

PETITIONER'S SCHEDULE OF PERFORMANCES AND INDEX OF CASES TO APPENDIX A

JUDICIAL PROCEDURE:

United States District Court for the District of Columbia, Andrew J. Easter vs. Dan A. Kimbel, Secretary of Navy, C.A. No. 1307-52

Page

† March 25, 1952, Petitioner's Complaint

July 7, 1952, Respondent's Motion to Dismiss

July 7, 1952, Respondent's Points and Authorities and Exhibit 1-13

August 5, 1952, Stipulation of Andrew J. Easter

August 18, 1952, Petitioner's Objections to Respondent's Motion, with Points and Authorities

‡ October 15, 1952, Hearing before Judge Youngdahl (See Official Transcript of Proceedings)

† October 28, 1952, Order: Respondent's Motion Denied, Leave for Petitioner to File an Amended Complaint, *Case set for trial* ..... 4 A

November 12, 1952, Amended Complaint filed

January 19, 1953, *Dan A. Kimbel, Secretary of Navy Resigned*

February 4, 1953, *Robert B. Anderson appointed Secretary of Navy*

† April 7, 1953, Respondent's Answer to Petitioner's Complaint which was filed March 25, 1952

February 19, 1954, Motion to Dismiss: by *Consent*

† March 9, 1954, Order: *by Consent*
United States District Court for the District of Columbia, Andrew J. Easter vs. Robert B. Anderson, Secretary of Navy, C.A: 1174-54

† March 19, 1954, *Petitioner's Complaint filed: by consent*

May 2, 1954, *Robert B. Anderson, Secretary of Navy, resigned*

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† Pertinent incidents.

‡ Decisive incident.

Refer to the original records filed in this proceeding for all other actions and/or Petitioner's brief filed herewith.

Page

May 3, 1954, *Charles S. Thomas, appointed Secretary of Navy*

July 8, 1954, Petitioner's Motion to substitute party defendant filed

July 8, 1954, * Order substituting party defendant: *by consent* ..... 5 A

September 27, 1954, Respondent's answer to complaint

January 13, 1956, Pre-trial proceedings

February 8, 1956, Respondent's Motion for Summary Judgment, with Points & Authorities and Exhibits 1-13

April 18, 1956, Petitioner's Objections to Respondent's Motion, with Points and Authorities

† April 18, 1956, Affidavit of Petitioner

† April 18, 1956, Affidavit of Petitioner's Counsel

† April 27, 1956, Supplemental Affidavit of Petitioner's Counsel

† June 25, 1956, Transcript of proceeding on motion for summary judgment

June 26, 1956, Order granting respondent's Motion for Summary Judgment ..... 6 A

July 5, 1956, Petitioner's Motion to Set Aside Order and Reinstate Case

October 1, 1956, Order Denying Motion ..... 7 A

October 29, 1956, Notice of Appeal
United States Court of Appeals for the District of Columbia Circuit, October Term 1956. Andrew J. Easter vs. Charles S. Thomas, Secretary of Navy, No. 13,631

April 1, 1957, *Charles S. Thomas, Secretary of Navy, resigned*

April 1, 1957, *Thomas S. Gates, Jr., appointed Secretary of Navy*

April 4, 1947, Petitioner's Motion to substitute party defendant

April 11, 1957, Order denying above motion without prejudice, with leave to renew for "reasons"

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* 3rd Secretary of Navy, 1st Motion to substitute party defendant

Page

April 25, 1957, Petitioner's Motion to substitute party defendant: *by consent*

April 26, 1957, * Order substituting party defendant: *by consent* ..... 8 A

Andrew J. Easter vs. Thomas S. Gates, Jr., Secretary of the Navy, No. 13,631

June 20, 1957, Hearing and Order ..... 9 A

July 3, 1957, Petition for rehearing en banc

July 24, 1957, Petition for rehearing denied, per curium ..... 10 A

October, 1957, This petition

ADMINISTRATIVE PROCEDURE:

Bureau of Ships, Navy Department, Washington, D. C.

† March 26, 1951, Subject: Removal, Exhibit 2 ..... 10 A

April 2, 1951, Petitioner's Answer, Exhibit 3 ..... 12 A

April 2, 1951, Petitioner's Answer, Exhibit 4 (Pet. Brief app. P. 15A)

April 3, 1951, Answer rejected, Notice of Hearing, Exhibit 5 ..... 13 A

April 5, 9, 10, 17, 18, 1951, Hearing, Exhibit 13: Transcript in the Original Record

† May 12, 1951, Subject: Removal, Exhibit 6 ..... 14 A

May 18, 1951, Petitioner's Appeal to Under Secretary of Navy, Exhibit 7 ..... 15 A

† November 28, 1951, Appeal Denied, Exhibit 9 ..... 16 A

* 4th Secretary of Navy, 2nd Motion to substitute party defendant

APPENDIX A

Filed October 28, 1952, Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1307-52

ANDREW J. EASTER
2801 Adams Mill Road, N.W.
Washington, D. C., PLAINTIFF,

vs.

DAN A. KIMBALL
Secretary of the Navy
Room 42710 Pentagon
Washington, D. C., DEFENDANT.

ORDER

• • • •

THIS CAUSE having come on to be heard on the defendant's motion for summary and argument having been had by counsel for the respective parties, it is this 28th day of October, 1952,

ORDERED that the defendant's motion for summary judgment be and the same hereby is denied, and the plaintiff is granted leave to file an amended complaint.

/s/ LUTHER YOUNGDAHL
JUDGE.

Seen:

/s/ FRANK H. STRICKLER
Attorney for Defendant

35 Filed JUL 8 1954 Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER

Plaintiff

v.

ROBERT B. ANDERSON
Secretary of Navy

Defendant

ORDER SUBSTITUTING PARTY DEFENDANT

The motion of the plaintiff to substitute party defendant having come on for determination at this term of Court, and it appearing to the Court that Robert B. Anderson, the defendant in this cause, is no longer serving as Secretary of Navy, and he ceased to hold that office within the past six months, and his successor is Charles S. Thomas, it is by the Court, this 8th day of July, 1954,

ORDERED, that the plaintiff's motion to substitute Charles S. Thomas as defendant for Robert B. Anderson in the above entitled cause be and the same is hereby granted.

/s/ Alexander Holtzoff
JUDGE

Consent:
Frank H. Strickler
Asst. U. S. Attorney

• • • •

143 Filed June 26, 1956

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER, PLAINTIFF

v.

CHARLES S. THOMAS,
Secretary of the Navy, DEFENDANT

ORDER

Upon consideration of the pleadings, affidavits and record of this Court in Civil Action No. 1307-52, filed herein, defendant's motion for summary judgment to which exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13 have been attached hereto and made a part thereof, and plaintiff's cross-motion for summary judgment, it appearing to the Court that there exists no genuine issue of material fact, that plaintiff's removal was legal and valid, and that plaintiff's claim is barred by laches, and that the defendant is entitled to judgment as a matter of law, it is this 26th day of June, 1956,

ORDERED that defendant's motion for summary judgment be and the same is hereby granted, and it is

FURTHER ORDERED that plaintiff's cross-motion for summary judgment be and the same is hereby denied.

/s/ F. DICKENSON LETTS
Judge

Certificate of Service

I hereby certify that service of the foregoing Order was made upon plaintiff by mailing a copy thereof to his attorney, Paul L. O'Brien, 729 15th Street, Washington 5, D. C. this 25 day of June, 1956.

/s/ KITTY BLAIR FRANK
KITTY BLAIR FRANK
Assistant United States Attorney, Attorney for Defendant

• • • •

151 Filed Oct. 1, 1956

ORDER

Upon consideration of plaintiff's motion to set aside order and reinstate cause, it is this 1st day of October, 1956,

ORDERED that the said motion be and the same is hereby denied.

/s/ F. DICKENSON LETTS
Judge

Certificate of Service

I hereby certify that service of the foregoing Order was made upon Andrew J. Easter, P.P., 2801 Adams Mill Rd., N.W., Washington, D.C. and upon Paul L. O'Brien, 729 15th Street, Washington, D.C. this 27 day of September, 1956, by mailing copies thereof to them at those addresses.

/s/ KITTY BLAIR FRANK
KITTY BLAIR FRANK
Assistant United States Attorney

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

April 26, Term, 1957

No. 13,631

ANDREW J. EASTER, APPELLANT,

v.

CHARLES S. THOMAS,
Secretary of the Navy, APPELLEE.

Before: Edgerton, Chief Judge, in Chambers.

ORDER

Upon consideration of appellant's motion to substitute Thomas S. Gates, Jr., as party appellee on the ground that on April 1, 1957, Thomas S. Gates, Jr., succeeded Charles S. Thomas as Secretary of the Navy, and *it having been alleged that there is a substantial need for continuing and maintaining this action, and it appearing that appellee has consented* to said motion, it is

ORDERED that Thomas S. Gates, Jr., be, and he is hereby, substituted as appellee herein in the place and stead of Charles S. Thomas.

Dated: April 26, 1957.

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 13631

ANDREW J. EASTER, APPELLANT

v.

THOMAS S. GATES, JR., Secretary of the Navy, APPELLEE

Appeal from the United States District Court for the District of Columbia

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Decided June 20, 1957

Mr. George Washington Williams, of the bar of the Court of Appeals of Maryland, *pro hac vice*, by special leave of Court, for appellant. Andrew J. Easter, appellant, filed a brief *pro se*.

Mr. Hershel Shanks, Attorney, Department of Justice, with whom *Assistant Attorney General Doub*, and *Messrs. Oliver Gasch*, United States Attorney, and *Paul A. Sweeney*, Attorney, Department of Justice, were on the brief, for appellee.

Before EDGERTON, *Chief Judge*, and WILBUR K. MILLER and DANAHER, *Circuit Judges*.

PER CURIAM: The plaintiff, a former employee of the Navy Department, appeals from a summary judgment for the Secretary of the Navy in a suit to set aside the plaintiff's discharge from his employment. We find no error.

Affirmed.

Filed July 24, 1957 Joseph W. Stewart, Clerk

• • • •

ORDER

Upon consideration of appellant's petition for a rehearing in banc, it is

ORDERED by the Court that the petition be, and it is hereby, denied.

Per Curiam.

Dated: July 24, 1957.

EXHIBIT 2

LL/EASTER/A.J.
26 March 1951

To: Andrew J. Easter, Code 444
Subj: Removal

1. The Bureau is at present considering termination of your employment for cause.

2. The specific charges against you are: (1) Unsatisfactory performance (2) Insubordination (3) Disrespectful attitude toward supervision (4) Unreliable attendance and (5) your lack of interest in your work and the overall affect of your expressions upon the morale of other employees.

3. Upon your assignment to the Stability Section in 1946, you were informed by memorandum that certain knowledge was necessary to perform your assigned duties and you were further advised how that knowledge might be obtained. However, to the present date you have acquired so little of the knowledge specified, that you must be assigned routine tasks and cannot be relied upon to satisfactorily complete a task within a reasonable time commensurate with your grade and salary.

4. Your insubordinate and disrespectful attitude toward your supervision has apparently continued for some time. Corrections of errors in your work have resulted in lengthy, heated, time consuming arguments with your supervisors, during which you have frequently, openly and loudly accused them of incapability. On other occasions you have refused to put forth a special effort to meet work deadlines on the claim that your special efforts in the past went unrewarded. You have refused to make modifications on assigned work on the claim that the work should have been assigned correctly in the first place even though it was explained to you that later developments required that modifications be made. Discussions with your supervisors regarding your attitude have resulted on many occasions in threats made by you of law suits, appeals and physical violence.

5. You are frequently absent from your desk without permission for long periods of time. From information received through various sources, it appears much of this time is spent merely visiting other sections of the Bureau to talk to other employees of your grievances against the Bureau and its personnel and to air your personal troubles. You have left business discussions in your own section to pursue this activity of yours. You have frequently spent periods of time away from the building without permission. You apparently consider that your own personal matters take priority over your work assignments. It is considered that your lack of interest in your work and your penchant to speak adversely of the Bureau and its supervisors have a detrimental effect on other employees particularly those unacquainted with the full situation.

6. In January 1951, upon being informed by your supervisor that you would be given an "Unsatisfactory" Performance Rating unless improvement was shown, you defiantly informed him that you were not making any effort to perform satisfactorily, had no intention of improving

and that you hoped that the "Unsatisfactory" rating would bring to a "head" a matter with which you were concerned. Such attitude on the part of any employee cannot be condoned.

7. You have the privilege of replying in writing within five (5) days of the date of these charges to show cause as to why your services should not be terminated and to request a hearing if you so desire. If you desire a hearing, you may be represented by any person of your choice and you may bring witnesses who have a direct kuowledge of the circumstances resulting in the preferral of those charges.

8. Your reply must be in writing and must be received in Code 263 on or before close of business 2 April 1951. Failure to reply or an unsatisfactory reply will result in your termination for cause, effective close of business 10 April 1951.

H. N. Wallin
Chief of Bureau

EXHIBIT 3

6240 Belair Road
Baltimore 6, Maryland
April 2, 1951

Rear Admiral H. N. Wallin
Chief of Bureau
Bureau of Ships
Department of the Navy
Washington 25, D. C.

Dear Sir:

Enclosed you will find my formal answer to your removal notice transmitted to me in letter dated March 26, 1951.

It is respectfully submitted to you for your careful and favorable consideration.

Very truly yours,

/s/ ANDREW J. EASTER
Andrew J. Easter

AJE:ll

EXHIBIT 5

Filed February 8, 1956

Code 263
3 Apr 1951

MEMORANDUM

TO: Mr. Andrew J. Easter, Code 444
Subj: Removal
Ref: (a) BuShips ltr of charges addressed to Andrew J. Easter dated 26 March 1951
Encl: Letter of appointment of hearing board

1. Inasmuch as your reply to Reference (a) is not considered satisfactory, the hearing which you requested is granted and will convene in Room 3030 at 0815 hours, 5 April 1951

C. J. CATER
Captain, USN
Assistant Chief of Bureau
for Administration

73 **EXHIBIT 6**

LL/Easter, A.J.
12 May 1951

From: Chief, Bureau of Ships
To: Mr. Andrew J. Easter
Subj: Removal
Ref: (a) BuShips ltr of 26 Mar 1951 to A. J. Easter
(b) A. J. Easter ltr of 2 Apr 1951 to Chief, BuShips

1. By reference (a) you were notified of the proposed action to terminate your employment for cause. By reference (b) you replied to the charges contained in reference (a) and requested a hearing. A hearing was granted, a board was appointed by me to hold the hearing and make recommendations to me and hearings were held on 5, 9, 10, 17 and 18 April 1951. I have considered all of the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951.

2. You may continue in an active duty status until that time provided your conduct and performance permit.

3. You have the right to appeal this action to the Under Secretary of the Navy via the Chief, Bureau of Ships within ten (10) days from this date.

H. N. Wallin
Chief of Bureau

EXHIBIT 7

Washington, D. C.
May 18, 1951

From: Mr. Andrew J. Easter
To: Chief, Bureau of Ships
Subj: Removal
Ref: (a) BuShips ltr of 26 Mar 1951 to A. J. Easter
(b) A. J. Easter ltr of 2 Apr 1951 to Chief, BuShips
(c) BuShips letter 12 May 1951

1. By reference (c) the BuShips notified the undersigned that he was removed for cause effective 14 May 1951.

2. Paragraph 3, reference (c) advises that the undersigned has the right to appeal this action to the Under Secretary of the Navy, via the Chief, Bureau of Ships, within ten (10) days from this date.

3. Reference (c) was personally delivered to the undersigned at 1500 hours 14 May 1951.

4. Subsequent to the delivery of reference (c) the undersigned requested a copy of Record of Hearing and copies of all exhibits submitted at said Hearing, cited in Par. 1, ref. (c). The copy of Record was delivered but copies of exhibits were not. The exhibits are necessary in order to properly prepare my appeal to higher eschelons.

5. The undersigned by this letter exercises his right and notifies the Chief, Bureau of Ships, that said appeal is taken. He requests that all records b prepared and forwarded in compliance with the provisions of NCPI 80, Grievances and Complaints.

/s/ ANDREW J. EASTER
Andrew J. Easter
Appellant

CC: Under Secretary, Navy
OIR Code 220
Pentagon
Washington 25, D. C.

76 EXHIBIT 9

28 Nov 1951

My Dear Mr. Easter:

This is in reply to your appeal from removal action taken by the Bureau of Ships and is the final action in connection with your appeal. The entire record in connection with your case has been carefully reviewed and considered. Each of the charges is supported by competent evidence, both documentary and oral, and it is clearly established that the penalty of removal is appropriate.

Your appeal, therefore, is denied.

Very truly yours,

Francis P. Whitehair
Under Secretary of the Navy

PETITIONER'S SCHEDULE OF PERFORMANCES AND INDEX TO APPENDIX B

	Page
Knud H. Christensen's letter	2 B
Report of Efficiency Rating	3 B
Notice of Decision, Efficiency Rating Board of Review	4 B
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Efficiency Rating Board of Review "So-Called All-Purpose Ship"	14 B
Comments from Various Military Agencies ref. "Combined Merchant Naval Vessel"	15 B
Petitioner's Schedule of Performance and "Combined Merchant Naval Vessel"	17 B
Background	19 B

APPENDIX B

1927 - 38th Street, N. W.
Washington 7, D. C.
November 20th, 1953

To whom it may concern,

I have worked together with Andrew J. Easter for several years, from about 1945 to his dismissal from the Bureau of Ships. In my opinion he is an *excellent and productive worker.*

Mr. Easter has *strong individual views with respect to truth and justice* as he sees it, and I feel that his long drawn-out discussion with the management on such points of principle, in which he had become involved, was the underlying reason for his eventual dismissal from the Federal Service.

The above remarks on Mr. Easter's controversy with the Bureau of Ships are entirely those of a spectator.

/s/ Knud H. Christensen
Naval Architect

Standard Form No. 66
August 1948
U.S. CIVIL SERVICE COMMISSION

3B

Form Approved
Budget Bureau No. 50-R012.3.

REPORT OF EFFICIENCY RATING

ADMINISTRATIVE-UNOFFICIAL ( )
OFFICIAL:
REGULAR (X) SPECIAL ( )
PROBATIONAL ( )

As of 3-31-50 based on performance during period from 4-1-49 to 3-31-50

EASTER, Andrew J. (Name of employee)

Eng. Nav. Arch. (Title of position, service, and grade) GS-9

SHIPS (Organization—Indicate bureau, division, section, unit, field station) CODE 444

ON LINES BELOW MARK EMPLOYEE
√ if adequate
− if weak
+ if outstanding

1. Study the instructions in the Rating Official's Guide, C. S. C. Form No. 3823A.
2. Underline the elements which are especially important in the position.
3. Rate only on elements pertinent to the position.
   a. Do not rate on elements in *italics* except for employees in administrative, supervisory, or planning positions.
   b. Rate administrative, supervisory, and planning functions on elements in *italics*.

CHECK ONE:
Administrative, supervisory, or planning ..... ☐
All others ..... ☑

___ (1) Maintenance of equipment, tools, instruments.
___ (2) Mechanical skill.
√ (3) Skill in the application of techniques and procedures.
√ (4) Presentability of work (appropriateness of arrangement and appearance of work).
√ (5) Attention to broad phases of assignments.
+ (6) Attention to pertinent detail.
___ (7) Accuracy of operations.
√ (8) Accuracy of final results.
√ (9) Accuracy of judgments or decisions.
√ (10) Effectiveness in presenting ideas or facts.
√ (11) Industry.
+ (12) Rate of progress on or completion of assignments.
___ (13) Amount of acceptable work produced. (Is mark based on production records? _____) (Yes or no)
___ (14) Ability to organize his work.
√ (15) Effectiveness in meeting and dealing with others.
+ (16) Cooperativeness.
√ (17) Initiative.
√ (18) Resourcefulness.
√ (19) Dependability. (attendance not considered)
___ (20) Physical fitness for the work.

___ (21) *Effectiveness in planning broad programs.*
___ (22) *Effectiveness in adapting the work program to broader or related programs.*
___ (23) *Effectiveness in devising procedures.*
___ (24) *Effectiveness in laying out work and establishing standards of performance for subordinates.*
___ (25) *Effectiveness in directing, reviewing, and checking the work of subordinates.*
___ (26) *Effectiveness in instructing, training, and developing subordinates in the work.*
___ (27) *Effectiveness in promoting high working morale.*
___ (28) *Effectiveness in determining space, personnel, and equipment needs.*
___ (29) *Effectiveness in setting and obtaining adherence to time limits and deadlines.*
___ (30) *Ability to make decisions.*
___ (31) *Effectiveness in delegating clearly defined authority to act.*

STATE ANY OTHER ELEMENTS CONSIDERED
___ (A) _____
___ (B) _____
___ (C) _____

STANDARD
Deviations must be explained on reverse side of this form

Adjective Rating

___ (1) Maintenance of equipment, tools, instruments.
___ (2) Mechanical skill.
√ (3) Skill in the application of techniques and procedures.
√ (4) Presentability of work (appropriateness of arrangement and appearance of work).
√ (5) Attention to broad phases of assignments.
+ (6) Attention to pertinent detail.
___ (7) Accuracy of operations.
√ (8) Accuracy of final results.
√ (9) Accuracy of judgments or decisions.
√ (10) Effectiveness in presenting ideas or facts.
√ (11) Industry.
+ (12) Rate of progress on or completion of assignments.
___ (13) Amount of acceptable work produced. (Is mark based on production records? _____) (Yes or no)
___ (14) Ability to organize his work.
√ (15) Effectiveness in meeting and dealing with others.
+ (16) Cooperativeness.
√ (17) Initiative.
√ (18) Resourcefulness.
√ (19) Dependability. (attendance not considered)
___ (20) Physical fitness for the work.

___ (21) *Effectiveness in planning broad programs.*
___ (22) *Effectiveness in adapting the work program to broader or related programs.*
___ (23) *Effectiveness in devising procedures.*
___ (24) *Effectiveness in laying out work and establishing standards of performance for subordinates.*
___ (25) *Effectiveness in directing, reviewing, and checking the work of subordinates.*
___ (26) *Effectiveness in instructing, training, and developing subordinates in the work.*
___ (27) *Effectiveness in promoting high working morale.*
___ (28) *Effectiveness in determining space, personnel, and equipment needs.*
___ (29) *Effectiveness in setting and obtaining adherence to time limits and deadlines.*
___ (30) *Ability to make decisions.*
___ (31) *Effectiveness in delegating clearly defined authority to act.*

STATE ANY OTHER ELEMENTS CONSIDERED
___ (A) _____
___ (B) _____
___ (C) _____

STANDARD
Deviations must be explained on reverse side of this form

Adjective Rating

Plus marks on all underlined elements, and check marks or better on all other elements rated ..... Excellent
Check marks or better on all elements rated, and plus marks on at least half of the underlined elements ..... Very Good
Check marks or better on a majority of underlined elements, and all weak performance overcompensated by outstanding performance ..... Good
Check marks or better on a majority of underlined elements, and all weak performance not overcompensated by outstanding performance ..... Fair
Minus marks on at least half of the underlined elements ..... Unsatisfactory

Rating official.. V.G.

Reviewing official.. VG

Rated by Sebastian L. Wright Jr. (Signature of rating official) ENGINEER (Title) 12 APRIL 1950 (Date)

Reviewed by Carlos L. Moore (Signature of reviewing official) ENGINEER (Title) 13 APRIL 1950 (Date)

Rating approved by efficiency rating committee 2 2 MAY 1950 (Date) Report to employee VERY GOOD (Adjective rating)

U. S. GOVERNMENT PRINTING OFFICE 16—68172-8

Rating shown to employee A.J.E. 4/25/50 (Initial) (Date)

OFFICE OF THE CHAIRMAN

EFFICIENCY RATING BOARD OF REVIEW NAVY DEPARTMENT

Washington 25, D. C.

Docket No.: D-3520-44

NOTICE OF DECISION

Appellant: Mr. Andrew J. Easter
Classification Grade: P-4
Organization Unit: Bureau of Ships

Efficiency rating
as of: March 31, 1944
appealed: Very Good
determined: Very Good

Date of Decision: May 4, 1945

Oral Hearing:
April 27, 1945 and
May 4, 1945

Board of Review Members: Mr. Warren McLaine, Mr. Anthony J. Oliver, Mr. George W. Metzger

Employee Representative: Mr. David R. Glass

Department Representative:
Special Department Representative:
Mr. Donald M. Brown
Lt. L. D. McCord

Witnesses:
Mr. Robert W. Bruce
Mr. S. B. Crosby
Capt. A. Sledge

SUMMARY OF FACTS

After thorough consideration of all the information presented in this case, the Board of Review finds as follows:

1. The appealed rating covers appellant's performance as Engineer (Naval Architect), grade P-4, for the period from April 1, 1943 to March 31, 1944.

2. The following duties and responsibilities are set forth in appellant's official job description:

> "Under general supervision with responsibility for developing designs and general arrangements required for the conversion of merchant vessels to naval auxiliaries:
>
> After conducting extensive engineering investigations and utilizing the original plans of the particular vessel as constructed, develops complete designs of hull arrangements required in order to convert merchant and other vessels to troop transports, repair ships, hospital ships, landing boat carrying vessels, mine layers, gun boats, etc.
>
> These designs are prepared with special attention to incorporation of various features required in order to comply with safety and performance standards established by the Navy but at the same time to permit the conversion to be completed with a minimum of expense and delay. Makes the more difficult calculations and utilizes extensive knowledge of Naval architecture in preparing complete layouts and details of the arrangements for gun replacements, ammunition storage facilities, officer and crew quarters, deck fixtures, sounding rooms, navigational facilities, etc; supervises lower grade engineers and draftsmen as required in completing various phases of the work; assumes responsibility for hull designs of entire ships assigned to this incumbent for conversion.
>
> Examines plans received from Maritime Commission and shipyards making recommendations concerning various hull design features required in order to place a vessel in service to perform a particular function as a naval auxiliary."

3. No change is made in the following element pattern which was used by the department in evaluating appellant's performance (with the department's evaluations indicated): Elements No. 3, Skill in the application of techniques and procedures (√); 4, Presentability of work (√); 6, *Attention to pertinent detail* (√); 8, *Accuracy of final results* (√); 9, Accuracy of judgments or decisions (√); 10, Effectiveness in presenting ideas or facts (√); 11, Industry (+); 12, *Rate of progress on or completion of assignments* (+); 16, Cooperativeness (+); 18, *Resourcefulness* (+); and 19, Dependability (√).

4. Appellant was usually thorough in his designs and drafting work. In the conversion of merchant vessels to Navy auxiliaries it was necessary to see that all the requirements of the Navy Department were met. These requirements were established and varied according to the type of vessel desired and the complement of men assigned to such vessel. Appellant took these factors into consideration and his finished work product was usually accurate.

Appellant's contention that he was the lead man on all the new designs was not supported by the information presented. Appellant was given the responsibility of drawing up preliminary plans for certain new conversions and he usually performed such assignments in a satisfactory manner. However, other naval architects in his section were also assigned to this work.

5. Appellant's contention that he had to be outstanding on Element No. 6 to perform the preliminary design work is without merit since any fully qualified naval architect familiar with Navy procedure on conversion of merchant vessels was able to, and did, perform such design work.

6. Appellant was a *diligent worker and had the ability to perform his work in a rapid manner.* The production records introduced by the department cannot be

accepted as conclusive evidence of appellant's productivity since these records do not reflect all of the work performed by appellant. In addition, the work of the section was not sufficiently heavy to provide appellant with a steady flow of work at all times. Appellant never missed a deadline on any work assigned to him. When it was necessary for him to work overtime to complete a specific assignment he was willing to work overtime to complete it. This necessity did not occur frequently.

7. Appellant was always willing to carry out instructions and assist in the completion of the work of his section. He could be relied upon to perform his work in a creditable manner. His attendance record was not good. Since appellant did not live in the city, it was not always convenient for him to, nor did he always, secure prior approval of leave. However, these absences were not shown to have too seriously affected his work.

8. Appellant was most effective in suggesting possible series of arrangements in the layout of plans where the established methods could not be followed precisely in particular cases. He was also adept in suggesting ways and means of converting vessels with the minimum amount of alterations to existing vessels, thus contributing to the reduction of costs involved in the conversion.

9. No change is made in the evaluation of any of the pertinent or especially important elements.

DECISION

On the basis of the above findings, the Board of Review renders the following decision:

The efficiency rating of "Very Good" is affirmed.

By direction of the Board of Review:

/s/ GEORGE W. METZGER
George W. Metzger,
Chairman

5 March 1945.

Mr. Andrew J. Easter
6420 Belair Road,
Baltimore, Maryland.

My dear Mr. Easter:

I take pleasure in acknowledging the receipt of your most interesting plan for a special combat carrier, and even more, I feel that your interest and effort are most commendable American gestures.

I have turned your plan over to the General Board of the Navy as the proper agency to study the details of your proposed ship in the light of global strategy and the future trend of the war. At the same time I am requesting the Board to advise you as may be appropriate concerning the findings and opinions.

Very sincerely,
/s/ W. F. Halsey

OFFICE OF DWIGHT D. EISENHOWER

Commodore Hotel
New York 17, New York
December 31, 1952

Dear Mr. Easter:

General Eisenhower has asked me to acknowledge your letter of December 29th. He deeply appreciates your interest in improving our ship designs.

Inasmuch as this is General Eisenhower's personal headquarters, and has only a small staff, we do not have the necessary facilities for giving your proposal the proper technical analysis at this time. I suggest you submit this matter to the Navy Department after the new Administration takes office. At that time it will be possible to give it the thorough study which it appears to deserve.

The continued success of our efforts will depend on the interest and participation of every thinking citizen. We are happy to know we can count on you.

Sincerely yours,

/s/ SHERMAN ADAMS
Sherman Adams
Assistant to
General Eisenhower

Mr. Andrew J. Easter
6420 Belair Road
Baltimore 6, Maryland

DEPARTMENT OF DEFENSE APPROPRIATIONS FOR 1958

HEARINGS

Before The

SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

EIGHTY-FIFTH CONGRESS

First Session

on

H. R. 7665

MAKING APPROPRIATIONS FOR THE DEPARTMENT OF DEFENSE FOR THE FISCAL YEAR ENDING

June 30, 1958, and for other purposes

Printed for the use of the Committee on Appropriations

Testimony and Statement of

ANDREW J. EASTER

Re "BABY FLATTOP" and "MERCHANT-NAVAL VESSEL PLAN"

Wednesday, June 19, 1957—Outside Witnesses,

page 1525 to 1526

"MILITARY SECURITY WITHOUT COST."

DEPARTMENT OF DEFENSE APPROPRIATIONS,

1958

STATEMENT OF ANDREW J. EASTER

BABY FLATTOP SUGGESTED

Mr. EASTER. I will be very brief. I am a former Government employee of the Navy Department, converting ships to naval auxiliaries.

I realize the confusion and lack of experience of people in time of war. I had gotten out an idea that was a beneficial suggestion to help in the problem of transporting military cargo and so forth and the Navy eventually used the baby flattop which you all heard of. I got fired for pressing for the adoption of it.

I am not here speaking for my personal welfare. This happens to be a brief No. 13,631 in the United States Court of Appeals, District of Columbia which brings out very strongly, and has in here, if you read it, comments on this idea by General Eisenhower or President-elect Eisenhower before his first term.

It was sent to the Navy Department with comments from Admiral Halsey.

In any case, the original idea is in the naval service as the baby flattop.

MERCHANT-NAVAL VESSEL PLAN

I further recommend this merchant naval vessel for use by the United Nations. I am just an individual American. I saw how the United Nations members from the small countries worked for the purpose of peace and also to try to help prevent the big boys from getting together.

This ship idea is a merchant-naval vessel. It is the same principle as the baby flattop, but more interchangeable. The baby flattop is a merchant vessel originally converted for aircraft carriers.

At that time, they spent about $5 million to convert the first. I found from the shipyards that they could build my ship at that time for $6 million. This ship is honeycombed; you can hardly sink it.

It won't heel on account of cross flooding and no unsymmetrical sections. My belief is that a ship of this type can carry cargo in peacetime. We are all talking about

defense. Life is more important than money. Yet we have an idea that the Navy and the Government is well aware of, General Eisenhower, Admiral Halsey, and admirals of the Navy Department, and the military forces. If they really want defense at low cost, they would give consideration to this idea. This ship will eliminate two other vessels which they call single-purpose vessels. This ship is large enough to do a 100-percent job. Military cargo requires a lot of floorspace. The ship is designed whereby you could open up the hatches or the decks and carry bulk cargo for merchant and military use.

In peacetime the ship could continue around the world with a tendency to prevent war and pay its own way. Therefore, we could have *military security without cost.*

I had been advised through different people in the Navy Department, pretty near the top, to get this into the Patent Office as a matter of record. The serial number is 788151. It was filed November 26, 1947. In the United

State Patent Office it is called combined merchant and military vessel.

Senator CHAVEZ. What happened after you filed it in 1947? Was the patent issued?

Mr. EASTER. No, sir. We filed an amendment. Of course, I say it is just another one of those things.

FILE IN PATENT OFFICE

Senator CHAVEZ. You might file that with the committee if you want to and we will have the staff to analyze it.

Mr. EASTER. I could not afford to give you 24 sets of these. You could refer to it in the Patent Office and you could have access to it.

Senator CHAVEZ. We want to read it and consider it. That is why I wanted you to send it to us.

Mr. EASTER. Representative Cole came out against $30 million to spend for an atomic vessel. Here is a man against the building of any vessel for exhibition purposes. I got in touch with him, showing him the idea. He said can you get me a letter from someone who is experienced in military forces.

So I inquired of Captain Karig. He said absolutely and definitely we will send that letter. I have inquired of naval architects who helped me to develop this in the Navy Department.

They said "Easter, you know what has happened to you."

I said regardless of that, this is for the interest of the country.

Captain Karig eventually called me up and said his wife refused to let him submit the letter. Of course, he is now deceased.

Senator CHAVEZ. You send whatever information you have. We will be very glad to consider it.

Mr. EASTER. I will mark up some briefs, too. It will be good to read this.

Senator CHAVEZ. If you will give us a chance, we will.

COMPETENCE QUESTIONED

Mr. EASTER. I will call your attention to the things:

The incompetence of personnel management in the Navy Department and the other departments, too. I was there with them. At first they tried to prevent me from working with them and charged me with * diabetes. Up to the present time, I don't have diabetes. But that is what costs money, incompetence.

Also, you see the efficiency mark on here and also the civil service ratings as early as 1946, the P-5, which is a high engineer rating.

---

* *Johns Hopkins Hospital, Baltimore, Maryland, reversed the Government and the Civil Service Commission concurred.*

Maybe eventually we will come to the end that we can practically eliminate the reasons for war.

Senator CHAVEZ. I hope you are giving us some good ideas.

Mr. EASTER: Yes, sir. I am ready at any time.

Senator CHAVEZ. Thank you.

Mr. EASTER. Thank you very much.

EFFICIENCY RATING
BOARD OF REVIEW
NAVY DEPARTMENT

BOARD 1

Washington 25, D. C.

PC-ERA:WCS:flm
Docket No.:D-8324-46

NOTICE OF DECISION

Appellant: Mr. Andrew J. Easter
Classification Grade: P-4
Title of Position: Engineer,
(Naval Architect)

Efficiency rating
as of: March 31, 1946

Date of Decision: Jan. 17, 1947

Date of Hearing: January 16, 1947

PART OF SUMMARY OF FACTS

Pg. 3, para. 14.

"Resourcefulness" was an asset of the appellant. He seldon failed to solve problems that confronted him. Imagination and ingenuity were demonstrated by him in meeting situations as they arose. Fertility of ideas led to proposals for a so-called all-purpose ship, the plans for which were presented for consideration to the

Bureau of Ships, and later to Admiral Halsey and to General Eisenhower. Presentation through official channels was ignored in the submission of this proposal to the aforementioned officers. The rejection of his proposal does not detract from the fact that the appellant's thought was to originate a useful adjunct. Cf. see 7B, to 18B.

W. C. SORRELS
Chairman

COMMENTS FROM VARIOUS MILITARY AGENCIES REFERENCE

"Combined Merchant Naval Vessel"

January 24, 1941,	Petition's superior, Mr. Crosby, Chief of War Plans Section, said *"ship will work"*
January 27, 1942,	Captain Swasey said *"best scheme he ever saw for P T Tender"*
March 9, 1943,	Mr. George Seiker said *"Type of ship was O.K. all can be used for all or any single purpose"*
August 11, 1943,	Memo, Colonel Hicks *"Features are provided would have considerable in their favor for use in an area where enemy naval forces would oppose combat loading"*
September 16 & 23, 1943,	Lt. Pope, T P Boat, Maintenance, 1st Endorsement
September 23, 1954,	From Bushipsi *"your interest in naval design matters is commendable"*
December 6, 1944,	Captain Solberg, Chairman Beneficial Suggestion Committee BUSHIPS, said: petitioner *"was entitled to something"*

January 25, 1945,	Chairman Beneficial Suggestion Committee stated *"Ship was sound and practical . . ."*
February 5, 1945,	Captain Solberg said *"ship idea isn't dead by any means"*
February 6, 1945	Enclosure A & B "Design Exhibits" to Navy Department Board of Awards
August 15, 1946,	Mr. John C. Niedermair, Chief, Preliminary Design, Bureau of Ships, said *"merchant aircraft carrier by Burntisland, British Ship Yard, was an infringement on petitioner's idea"*
August 21, 1946,	At conference with Commander Palmer et al., Wright protested commanders statement about weight estimate and insisted *petitioner's estimate was correct.*
February 6, 1948,	Mr. Charles C. Gager of Preliminary Design, Bushipe, said *"they are using your idea piece by piece"*
July 6, 1950,	Captain Karig *"very interesting"*
July 25 & 27, 1950,	Captain Karig *"Wanted Admiral Sherman to see ship"*
September 7, 1950	Bureau of Aeronautics stated *"ships were built to accommodate planes, said unsuitable vessels were forced on them, this is what we need"*
September 21, 1950,	Captain Morgan said *"shipping interest should not object, we are paying for everything anyway"*
October 21, 1950,	The Washington Star stated Admiral Cochran said *"20 knot ships were useful in peace and invaluable in war"*
November 2, 1950,	Captain Took stated Captain Morgan said *"it was interesting but they would have to change the law and to get the shipping people interested"*

PETITIONER'S SCHEDULE OF PERFORMANCE AND "COMBINED MERCHANT NAVAL VESSEL"

United States Patent Office, Washington, D. C.
November 26, 1947, Serial No. 788151,

Navy Department, Bureau of Ships, War Plans Section Code 459
Via Beneficial Suggestion Committee on Awards to
Civilian Employees, and Official Channels

January 16, 1939,	Appointed Chief Engineering Draftsman SP8
January 20, 1940,	Letter to Chief of Naval Operations, Admiral H. R. Stark
August 29, 1940,	Letter from Chief of Bureau of Ships in reference to letter to Admiral H. R. Stark, United States Navy
June 25, 1941,	Submitted sketch to Commander Philips of Bureau of Inventions, Bureau of Ships
August 10, 1942,	Letter via official channels, Subject: Beneficial Suggestion "Merchant Ship Design"
August 17, 1942,	Commander Philips, office. Research and Patents, Bureau of Ships
December 30, 1943,	Submission "Combined Merchant and Naval Vessel" Form 94 (Rev.) to Bureau of Ships Beneficial Suggestions Committee
June 13, 1943,	Letter from Technical Director of U. S. Maritime Commission
April 3, 1943,	Mr. Thurston, Assistant to Chief Design Section said "to submit plan"
April 8, 1943,	Submitted memo "Design of Combat Carrier, Combination Troop, Torpedo Boat and Aircraft Carrier, for Triphibian Operations"
July 6, 1943,	Captain Martin forwarded plan to War Department, Army Services Office.
March 1, 1944,	To National Inventors Council
May 6, 1944,	Recommendation by Commander Martin to Commander Mumma of the Secretaries Office, to Admiral King, for investigation.
May 27, 1944,	To Bureau of Aeronautics, Ship Installations
May 30, 1944,	Captain Metzel, requested prints for personnel study
July 21, 1944,	Captain Metzel "wants prints for personnel makeup"
December 6, 1944	Captain Solberg, Chairman of Navy Department's Board of Awards Committee said "he would support resubmission of ship plans to Navy Department Board of Awards Committee"

December 15, 1944	Lt. Richard, Navy Department, Board of Awards, requested petitioner to "prepare material for submission to Board"
January 10, 1945.	Captain Solberg, "to have model made"
January 19, 20, 1945,	Design Display, submitted
February 21, 1945,	Plans to Admiral Halsey
March 5, 1945,	Letter from Admiral Halsey
April 12, 1945,	Navy Department "will arrange a formal hearing to present ship to General Board"
September 26, 1945,	Congressman Vinson, Chairman of Naval Affairs Committee
November 13, 1945	Secretary of State Byrnes, Marshall, Chief of Staff of New Development Weapons, Joint Chief of Staff, Bethlehem Ship
April 29, 1946,	Office abolished, assigned to Damage Stability Section Code 456, Section 447-M, Scientific
October 22, 1946,	Sam, Wright and Heiser congratulated petitioner on his work, Floodable Length and Damage Stability of LSD, signed by Captain Palmer, Honsigner and Watson "(Presentability, neatness and clearness)"
* January 16, 1947,	Efficiency Rating Hearing, Comdr. Sledge said: "this man is ingenious and saves the Navy and the government money."
November 26, 1947	Filed letters of Patent, Serial 788151 in U. S. Patent Office, Washington, D. C. "Combined Merchant and Naval Vessel"
November 26, 1947	Notice from U.S.C.S.C. filed: Engineer (N.A.) P.5
July 6, 1950,	Captain Karig (Navy historical writer)
September 8, 1950,	Louis Johnson, Secretary of Defense
November 17, 1950,	Letter to Trigve Lie, Secretary General of the United Nations
* December 7, 1950,	Admiral Cockran, at Forum 440, "Ship Design of Future"
* December 27, 1950,	Notice of Unsatisfactory Performance. Petitioner showed it to Capt. Took, he said "*it was a personal matter and not to worry about it.*"
March 17, 1951,	Letter Patent Amended
* March 26, 1951,	Letter from Admiral Wallin. Subject: Removal
* May 14, 1951,	Notification of Personnel Action: Removal, *146 hours accrued annual leave and 320 hours accrued sick leave as of 5-15-51*

December 29, 1951,	Letters of Patent to President Elect Eisenhower
December 31, 1952,	Letter from Sherman Adams, assistant to President Eisenhower
August 3, 1953,	To Sherman Adams, Assistant to President Eisenhower
January 22, 1954,	Charles E. Wilson, Secretary of Defense
June 1, 1954,	From National Security Council "does not come within our purview"
September 24, 1954,	To Joint Chiefs of Staff
September 28, 1954,	Chief Operation Fleet Service & Maritime
June 19, 1957,	Statement before the Subcommittee of the Committee on Appropriations, United States Senate, H.R. 7665, Re "Baby Flat Top" U.S. Navy, and the "Merchant Naval Vessel" for the United Nations for military security without cost.

Background: Trained to observe—18 years of study and teaching, with honor, of the Fine and Applied Arts, which made it possible to design & develop ships, and other structures, and the preparation of this petition. The original of this reproduction is one of petitioner's best works.

Sincerely,

Petitioner note Jan. 16/39-57—Diary and various other legislative committees on atomic, military and/or naval affairs, all of which was instituted on the petitioner's own time and expense.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 560

ANDREW J. EASTER, PETITIONER

v.

THOMAS S. GATES, JR., SECRETARY OF THE NAVY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The order of the District Court granting the Government's motion for summary judgment (Pet. App. 6A) is not reported. The opinion of the Court of Appeals (Pet. App. 9A) is reported at 247 F. 2d 78.

JURISDICTION

The judgment of the Court of Appeals was entered on June 20, 1957 (Pet. App. 9A). The petitioner's timely motion for rehearing was denied on July 24, 1957 (Pet. App. 10A). The petition for certiorari was filed on October 18, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the grounds for petitioner's dismissal from public employment may be re-tried by the District Court.

2. Whether the procedures prescribed by the Lloyd-LaFollette Act have been followed in petitioner's dismissal.

3. Whether a delay of over two years and three months in seeking reinstatement in public employment constitutes laches.

STATUTE INVOLVED

The Lloyd-LaFollette Act, 37 Stat. 555, as amended, 62 Stat. 354, 5 U. S. C. 652, provides in pertinent part as follows:

> No person in the classified civil service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall (1) have notice of the same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges, with affidavits; and (4) be furnished at the earliest practicable date with a written decision on such answer. No examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer or employee directing the removal or suspension without pay. * * *

STATEMENT

Petitioner, a non-veteran civil service employee, instituted this suit on March 19, 1954, to compel the Secretary of the Navy to restore him to his position in the Bureau of Ships, Department of the Navy, from which he had been dismissed on May 14, 1951 (R. 2, 5–6). The District Court granted the Government's motion for summary judgment on the ground that petitioner's removal was lawful, and that, in any event, his claim was barred by laches (R. 36). This judgment was affirmed *per curiam* by the Court of Appeals for the District of Columbia Circuit (R. 46).

The facts, as they appear from the pleadings and the exhibits attached to the motion for summary judgment, may be summarized as follows:

On March 26, 1951, petitioner was notified by letter that the Bureau of Ships was considering termination of his employment for cause (R. 13). This letter detailed five charges: unsatisfactory performance, insubordination, disrespectful attitude toward supervision, unreliable attendance, and a lack of interest in his work which was adversely affecting the morale of other employees (R. 13). The factual basis for these charges was elaborated in detail (R. 13–15). Petitioner was informed that he had five days in which to answer, and that he might request a hearing if he so desired (R. 15). Petitioner answered at length and concluded by requesting a hearing (R. 15–22).

Hearings were held April 5, 9, 10, 17, and 18, 1951 (R. 22). The Government presented its witnesses, petitioner's counsel cross-examined them, and petitioner introduced his own witnesses and exhibits.

By letter of May 12, 1951, petitioner was notified by the Chief of the Bureau of Ships that, after a consideration of all the facts presented at the hearing, petitioner would be removed for cause on May 14, 1951 (R. 22). He was also informed of a right of appeal to the Under Secretary of the Navy (R. 22). Petitioner pursued this administrative remedy and was advised by the Under Secretary of the Navy, by letter of November 28, 1951, as follows (R. 23):

> The entire record in your case has been carefully reviewed and considered. Each of the charges is supported by competent evidence, both documentary and oral, and it is clearly established that the penalty of removal is appropriate. Your appeal, therefore, is denied.

On March 25, 1952, petitioner filed a complaint in the District Court for the District of Columbia (Civ. No. 1307–52), substantially the same as in the instant case (R. 33). The defendant in the 1952 action, the then Secretary of the Navy, Dan A. Kimball, resigned his position on January 19, 1953. Robert B. Anderson was appointed his successor. One year, one month, and 20 days passed and petitioner took no action with respect to this fact. In this posture of the case, the Government moved, late in February 1954, to dismiss for failure to substitute the party defendant in accordance with Rule 25 (d), F. R. C. P. The motion was granted on March 9, 1954. On March 19, 1954, two years, three months and 20 days after his appeal to the Under Secretary of the Navy had been denied, petitioner instituted the present suit (R. 2–3).

ARGUMENT

1. Petitioner's contention (Pet. 11–17) that the District Court should re-try the factual grounds for his dismissal from the Navy Department contravenes the firmly established principle that "a court of law has no jurisdiction to inquire into the guilt or innocence of the employee as to the charges upon which he was removed." *Levine* v. *Farley,* 107 F. 2d 186, 191 (C. A. D. C.), certiorari denied, 308 U. S. 622. Judicial review of the discretion of executive officers in discharging Government employees is limited to a consideration of whether there has been compliance with the statutory procedural requirements. The decisions are uniform that "if the prescribed procedure, if any, is followed and no constitutional or statutory right is denied, action of executive officers in discharging employees is not subject to revision in the courts." *Levy* v. *Woods,* 171 F. 2d 145, 146 (C. A. D. C.). To the same effect are *Eberlein* v. *United States,* 257 U. S. 82; *Keim* v. *United States,* 177 U. S. 290; *Keyton* v. *Anderson,* 229 F. 2d 519 (C. A. D. C.); *Williams* v. *Cravens,* 210 F. 2d 874 (C. A. D. C.), certiorari denied, 348 U. S. 819; *Carter* v. *Forrestal,* 175 F. 2d 364 (C. A. D. C.), certiorari denied, 338 U. S. 832.

2. There was more than strict compliance with the procedural requirements of the applicable statute in petitioner's discharge; he was given the benefit of extensive consideration and procedures which the Lloyd-LaFollette Act, 5 U. S. C. 652, *supra,* p. 2,

did not impose on the agency. The five procedural requirements of the Act were all fulfilled:

First, the employee must have notice that his removal is sought and of the charges preferred against him. Second, he must be furnished with a copy of these charges. Petitioner received a letter from the Chief of the Bureau of Ships dated March 26, 1951, advising him that his removal was being considered and listing five charges[1] (R. 13–15).

The third procedural requirement of the statute is that the employee be given a reasonable opportunity to answer the charges, with affidavits. Instead of being allowed to file only affidavits, petitioner was accorded a full-dress hearing at which he was represented by counsel who cross-examined the Government's witnesses and presented witnesses who testified on petitioner's behalf (R. 13–15). A hearing is not required by the statute, which specifically provides, *supra*, p. 2:

> No examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer or employee directing the removal or suspension without pay. * * *

The statute's fourth procedural requirement is that the employee be furnished at the earliest practicable date with a written decision on his answer. On April 3, 1951, the day after petitioner filed his administrative answer, he was notified in writing that

---

[1] Unsatisfactory performance, insubordination, disrespectful attitude toward supervision, unreliable attendance, and a lack of interest in his work which was adversely affecting the morale of other employees (R. 13–15).

his reply was "not considered satisfactory" and that the requested hearing would be held (Exhibit 5, attached to defendant's motion for summary judgment).

The final requirement of the statute is that the reasons for the removal be given in writing. At the conclusion of the administrative process, the Under Secretary of the Navy wrote petitioner on November 28, 1951, that "Each of the charges is supported by competent evidence, both documentary and oral" (R. 23).[2]

Petitioner's sole complaint with the procedure he was accorded appears to be that, because he was not notified prior to his administrative appeal of the reasons for the hearing officer's decision, he could not present an effective appeal (Pet. 10, 17–22). This, petitioner contends, is a violation of the statute. But the statute requires neither an appeal nor an initial hearing. All that is required is that at the conclusion of the administrative process reasons be given if the decision is adverse to the employee. That was done here (R. 23). Petitioner cannot complain of a statutory violation of his rights with reference to an administrative appeal when the statute makes no provision for such an appeal.

3. Moreover, petitioner's suit is barred, in any event, by laches. The instant suit was not commenced until over two years and three months after the denial of his appeal by the Under Secretary of the

[2] In *Green* v. *Baughman*, 243 F. 2d 610, 612 (C. A. D. C.), certiorari denied October 14, 1957, No. 192, this Term, it was held that the charges need not be repeated in the letter of dismissal so long as direct reference is made to them therein.

Navy.[3] That such unexcused delay in challenging dismissal from public employment constitutes laches is now well-settled. *United States ex rel. Arant* v. *Lane,* 249 U. S. 367 (delay of almost 2 years); *Nicholas* v. *United States,* 257 U. S. 71 (3 years); *Norris* v. *United States,* 257 U. S. 77 (11 months); *Haas* v. *Overholser,* 223 F. 2d 314 (C. A. D. C.) (2 years); *Elchibegoff* v. *Dulles,* 123 F. Supp. 831 (D. D. C.), affirmed, 222 F. 2d. 53 (C. A. D. C.), certiorari denied, 350 U. S. 874 (6 years); *Sawyer* v. *Stevens,* 221 F. 2d 822 (C. A. D. C.), certiorari denied, 348 U. S. 959; *Love* v. *Stevens,* 207 F. 2d 32 (C. A. D. C.); *Grasse* v. *Snyder,* 192 F 2d 35 (C. A. D. C.) (16 months); *United States ex rel. Cromwell* v. *Doyle,* 99 F. 2d 448 (C. A. D. C.), certiorari denied, 306 U. S. 640 (2½ years); *Caswell* v. *Morgenthau,* 98 F. 2d 296 (C. A. D. C.), certiorari denied, 305 U. S. 596 (18 months).

The only mitigating factor which petitioner can offer for his delay is the prosecution of an ineffective law suit which culminated in dismissal (for failure to substitute the party defendant) nearly two years after the complaint was filed.[4] This very excuse has been

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[3] Petitioner was discharged on May 14, 1951; his appeal to the Under Secretary of the Navy was denied on November 28, 1951; this suit was instituted March 19, 1954 (*supra*, p. 4).

[4] Petitioner filed his first suit on March 25, 1952. That suit was dismissed on the Government's motion on March 9, 1954 (*supra*, p. 4).

considered and rejected. See *Baxter* v. *Pace,* 193 F. 2d 20, 22 (C. A. D. C.), in which the court said:

> [Appellant] did not press his claims effectively against the Secretary of War (Army) until nearly four years after his dismissal. Such a delay in this type of case constitutes laches, and bars the action.

See also *Drown* v. *Higley,* 244 F. 2d 774 (C. A. D. C.) (delay of 27 months); *O'Connor* v. *Summerfield,* 239 F. 2d 69 (C. A. D. C.) (2 years, 4 months); cf. *Grasse* v. *Snyder,* 192 F. 2d 35 (C. A. D. C.), where other ineffective attempts to find redress did not mitigate the effect of the delay in filing suit.[5]

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[5] The Government was not guilty, as petitioner charges, of any excessive delay in defending the first suit. The complaint in the first suit was filed on March 25, 1952 (R. 33). On July 7, 1952, the defendant filed a motion to dismiss or in the alternative for summary judgment (R. 33 and Record in Civ. No. 1307–52, District Court for the District of Columbia). The Government therefore delayed for six weeks beyond the time allowed by Rule 12 (a), F. R. C. P., for filing an answer or motion. Following the denial of the Government's motion with leave granted petitioner to file an amended complaint, petitioner filed an amended complaint on November 12, 1952 (Record in Civ. No. 1307–52). Answer was filed on April 7, 1953, approximately two and one-half months after Rule 12 (a), F. R. C. P., calls for the filing of a responsive pleading (R. 34). Thus, the Government can be charged with at most four months of the delay (six weeks delay in responding to the original complaint; two and one-half months delay in responding to the amended complaint) which extended for over two years and three months before an effective suit was commenced.

More to the point is petitioner's own lack of diligence in his prosecution of his claim, which is reflected in the fact that he took no action to change defendants for one year, one month, and twenty days after the original defendant had resigned his position, *supra*, p. 4.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

GEORGE COCHRAN DOUB,
Assistant Attorney General.

PAUL A. SWEENEY,
HERSHEL SHANKS,
Attorneys.

NOVEMBER 1957.

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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957.

No. 560

ANDREW J. EASTER,
Petitioner,

v.

THOMAS S. GATES, JR., Secretary of the Navy,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION TO RECONSIDER DENIAL OF CERTIORARI

Petitioner respectfully and urgently requests Your Honors to review the proceedings here, and with respect suggests that the following points may have been overlooked:

1. The Order of the District Court (Pet. App. 4A) denied the Defendant's (Respondent's) Motion for Summary Judgment, and Judge Youngdahl said: "*I think under all the circumstances in a case of this nature the Court should not grant summary judgment, but should let it go to trial.*" (Petitioner's Petition p. 22, also p. 20 last sentence: "In paragraph 9 of the respondent's answer filed April 7, 1953 and the answer to the complaint in this suit, filed September 27, 1954 (Pet. brief app. p. 10A, para. 9) respondent admits, and in fact stated, '*that petitioner was not furnished with findings of fact,*'" then follows the rea-

son of Judge Youngdahl on pp. 21-22). The Order of Judge Letts (6A) on the same motion granted the Defendant's Motion for Summary Judgment and, in part, states: *"there exists no genuine issue of material fact, that plaintiff's* (Petitioner's) *removal was legal and valid, and that plaintiff's claim is barred by laches, and that the defendant is entitled to judgment as a matter of law."*

Petitioner respectfully submits for the careful consideration of Your Honors that genuine issues of facts clearly exists here—as the specific charges made against Your Petitioner (10A-12A) by H. N. Wallin, (then) Chief of Bureau.

The said charges being fully refuted as disclosed by reference to Petitioner's petition pp. 11 (par. a.)-16, being part of the transcript identified in the original record as Exhibit 13, transmitted to this Honorable Court.

AUTHORITIES RE SUMMARY JUDGMENT

"This rule providing summary judgment procedure affects substantial rights of litigants and is not merely directory." Hoffman v. Babbitt Bros. Trading Co., C.A. Ariz., 203 F. 2d 636. Petitioner's substantive rights are affected here.

"On defendant's motion for summary judgment, allegations of complaint must be taken as true, and unless it appears with absolute certainty that plaintiff is not entitled to relief upon any theory the request for summary judgment should be denied." Smart v. U. S., D. C. Okl. 111 F. Supp. 907.

"The office of the motion for judgment on the pleadings or for summary judgment is for practical purposes the same, and often both are applicable, but if it is necessary to consider matters outside the pleadings, motion for judgment on the pleadings is to be treated as a motion for summary judgment, and neither can be granted

if there is any genuine issue as to any material fact." Munn v. Robinson, D. C. Ark. 92 F. Supp. 60, affirmed 188 F. 2d 1. Genuine disputes of material facts exist between the Parties here as referred to above.

"Rule providing for summary judgment was not designed to permit trial of real and genuinely contested issues of fact by affidavits." Suckow Borax Mines v. Borax Consol. C.A. Cal. 185 F. 2d 196, certiorari denied 71 S. Ct. 506, 340 U.S. 943, 95 L.Ed. 680, rehearing denied 71 S. Ct. 620, 341 U.S. 912, 95 L.Ed. 1349.

Petitioner's index to petition p. II notes the Administrative Procedure Act, which Act provides, among other procedures, "Sec. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court;"

Sec. 7. (c) * * * the proponent of a rule or order shall have the burden of proof. * * *.

Sec. 8. (3) supporting reasons * * * as well as the reasons or basis therefor, upon all the material issues of fact, * * *.

Sec. 10. (a) Any person suffering legal wrong because of any agency action, * * * shall be entitled to judicial review thereof."

Petitioners index to petition p. III cites Sec. 10. pg. 8 (e) Scope of Review.—of above act, which also provides, among other powers, that "the reviewing Court—shall * * * (B) hold unlawful and set aside agency action, findings and conclusions * * * (5) unsupported by substantial evidence * * * (6) unwarranted by the facts to the extent that the facts are subject to trial de novo * * *. In making the foregoing determinations the Court shall review the whole record * * * and due account shall be taken of the rule of prejudicial error."

And Sect. 12, of above act, "Nothing in the act shall be held to diminish the constitutional rights of any person * * *."

Petitioner's index to petition bottom of p. III notes the LaFollette-Lloyd Act as amended, which statute cites:

"Sec. 6 (b) (1) Any person removed * * * (a) * * * removal * * * unjustified or unwarranted, * * *."

Petitioner respectfully avers that had the District Court (Judge Letts) considered the evidence in the transcript or the portions of the evidence referred to above on pp. 11 (par. a)-16, a finding of genuine issues of facts would have been shown, which issues are outside of the pleadings, and the Petitioner is rightfully entitled to a trial of those issues, and, of course, Amendment VII, U.S. Constitution, provides the right of trial by jury.

LACHES—NOT A BAR TO PETITIONER'S SUIT

Petitioner's petition (3A) gives reference to Administrative Procedure, beginning on March 26, 1951 through November 28, 1951. (1A) shows: Petitioner's Complaint filed on March 25, 1952, against Dan A. Kimbel. Various proceedings until on or about February 19, 1954, when Counsel for both parties here agreed that the said complaint be dismissed because of inadvertent failure to substitute Robert B. Anderson as party defendant due to circumstances contributed to respondents' negligence, in filing their answer on April 7, 1953, (1A), affidavits (Pet. brief app. p. 33A, 34A), and verified by (Brief for the respondent in opposition, pg. 9[5]) and that a second complaint would be filed, the latter being filed on March 9, 1954 (pp. 2, 8). On July 8, 1954, Charles S. Thomas was substituted as party defendant (5A). On April 26, 1957, Thomas S. Gates, Jr. was substituted as party defendant (8A). The failure to substitute was treated in an equitable manner. Snyder v. Buck, 340 U.S.

15, specifically granted the party whose suit had abated the right to start over where there had been a failure to substitute. Also see citations on p. 26. And, further, no loss or inconvenience was incurred by the Respondent.

In conclusion, the Petitioner prays this Honorable Court to remand this case to the U.S. Court of Appeals, District of Columbia Circuit, with instructions to direct the U.S. District Court, District of Columbia to recind and vacate its Order of June 26, 1956 (6A) and to set for trial the issues of material facts disputed by the parties here, or for the reasons herein stated and the further reasons which will be disclosed by careful reading of the entire record of the proceedings here, your Petitioner respectfully prays this Honorable Court to grant to him the Writ of Certiorari.

Respectfully submitted,

ANDREW J. EASTER,
In Proper Person,
2801 Adams Mill Road, N.W.,
Washington 9, D. C., Apt. 108,
Petitioner.

Dated: January 2, 1958

CERTIFICATION

It is hereby certified by the undersigned that this petition is presented in good faith and not for delay and that the petition is restricted to grounds which are confined to intervening circumstances of substantial or controlling effect, available to petitioner, although not previously presented.

And that 3 copies of this petition were served on the Solicitor General, Counsel for the Respondent, Department of Justice, Washington 25, D. C. on the 2nd day of January 1958.

ANDREW J. EASTER,
Petitioner.